Supreme Court, U.S.
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Nos. 09-958, 09-1158, and 10-283

AND
BRIEFS

In the Supreme Court of the United States

TOBY DOUGLAS, Director of the Department of Health Care Services, State of California,

v.

INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, INC., A Nonprofit Corporation, et al.

TOBY DOUGLAS, Director of the Department of Health Care Services, State of California, et al.,

v.

CALIFORNIA PHARMACISTS ASSOCIATION, et al.

TOBY DOUGLAS, Director of the Department of Health Care Services, State of California,

v.

SANTA ROSA MEMORIAL HOSPITAL, et al.

On Writs of Certiorari to the United States Court of Appeals for the Ninth Circuit

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Petitions for Certiorari Filed February 16, 2010 (No. 09-958); March 24, 2010 (No. 09-1158); and August 25, 2010 (No. 10-283)
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Memorandum, *Santa Rosa Mem. Hosp. v. Maxwell-Jolly*, No. 09-17633 (9th Cir. May 27, 2010) 1a

Relevant Docket Entries in the United States District Court for the Central District of California, *Independent Living Center of Southern California, Inc. v. Maxwell-Jolly*, No. CV 08-3315 CAS (MANx)

5/19/2008	1	NOTICE OF REMOVAL from Superior Court of the State of California for the County of Los Angeles, case number BS114459 with conformed copy of summon and verified petition for writ of mandamus. Case assigned to Judge Christina A. Snyder, Discovery to Magistrate Judge Margaret A Nagle. (Filing fee $350 PAID.), filed by respondents Sandra Shewry, California Department of Health Care Services.(ghap) (Additional attachment(s) added on 5/29/2008: # 1 Exhibits A – E, # 2 Exhibit F) (ds). (Additional attachment(s) added on 5/29/2008: # 3 Notice of Assignment, # 4 Civil Cover Sheet) (ds). (Entered: 05/23/2008)
5/28/2008	6	NOTICE OF LODGING filed of Conformed Filed Verified First Amended Petition for Writ of Mandamus re Notice of Removal, 1 (Carman, Lynn) (Entered: 05/28/2008)
5/30/2008	10	NOTICE OF MOTION AND MOTION for Preliminary Injunction re: federal preempted 10% Medicaid payment cuts filed by Plaintiff [Independent Living Center of Southern California, et al.]. Motion set for

		hearing on 6/23/2008 at 10:00 AM before Judge Christina A. Snyder. (Carman, Lynn) (Entered: 05/30/2008)
5/30/2008	11	MEMORANDUM in Support of MOTION for Preliminary Injunction re: federal preempted 10% Medicaid payment cuts 10 filed by Petitioners [Independent Living Center of Southern California, et al.]. (Carman, Lynn) (Entered: 05/30/2008)
6/1/2008	12	NOTICE OF DISMISSAL filed by Petitioner [Independent Living Center of Southern California, et al.,] pursuant to FRCP 41a(1) Without Prejudice as to California Department of Health Care Services. (Carman, Lynn) (Entered: 06/01/2008)
6/2/2008	29	NOTICE OF LODGING filed Proposed Order re MOTION for Preliminary Injunction re: federal preempted 10% Medicaid payment cuts 10 (Attachments: # 1 Exhibit, # 2 Document) (Friedman, Stanley) (Entered: 06/02/2008)
6/12/2008	35	MEMORANDUM in Opposition to MOTION for Preliminary Injunction re: federal preempted 10% Medicaid payment cuts 10 filed by Respondents Sandra Shewry, California Department of Health Care Services. (Attachments: * * *) (Ugaz, Sara) (Entered: 06/12/2008)

6/16/2008	43	REPLY IN SUPPORT OF MOTION for Preliminary Injunction re: federal preempted 10% Medicaid payment cuts 10 FOR 6/23/08 HEARING filed by Petitioners [Independent Living Center of Southern California, et al.]. (Carman, Lynn) (Entered: 06/16/2008)
6/23/2008	46	MINUTES OF Motion Hearing on Petitioner's Motion for Preliminary Injunction 10 held before Judge Christina A. Snyder. The Court takes petitioner's motion under submission. The Court will issue a final order. Court Reporter: Laura Elias. (cj) (Entered: 06/23/2008)
6/25/2008	47	ORDER DENYING PETITIONERS' MOTION FOR A PRELIMINARY INJUNCTION by Judge Christina A. Snyder: The Court hereby DENIES Petitioners' Motion for Preliminary Injunction 10. See document for details. (gk) (Entered: 06/25/2008)
6/26/2008	48	NOTICE OF APPEAL to the 9th CCA filed by Petitioners [Independent Living Center of Southern California, et al.]. Appeal of Order 47 FEE NOT PAID. (Attachments: # 1 Civil Appeals Docketing Statement) (Friedman, Stanley) (Entered: 06/26/2008)
7/11/2008	64	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of

Appeals, 48 filed by [Independent Living Center of Southern California, et al.], CCA # 08-56061. The district court's order denying appellants' motion for a preliminary injunction is vacated and we remand for further proceedings. We also temporarily enjoin appellee from implementing A.B. 5's ten percent reduction in the reimbursement rate for prescription drugs, until August 11, 2008. If the district court has not ruled by then on appellants' motion for preliminary injunction, appellants may seek further temporary relief from this court. An Opinion will follow. Order received in this district on 7/11/08. (car) (Entered: 07/15/2008)

7/16/2008 66 ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, 48 filed by [Independent Living Center of Southern California, et al.], CCA # 08-56061. Because of the urgency of the district court's conducting the preliminary injunction hearing on the merits, this order directs the clerk to issue the mandate forwith [sic]. We delete from the order, however, the second and third sentences of the final paragraph that relate to the issuance of the stay; the two sentences commence with "We also" and end with "form [sic] this court." The

		panel retains jurisdiction over the stay request and will reconsider the question of a stay [in] light of the motion for reconsideration filed by the appellees. An order as to the stay will issue subsequently. Order received in this district on 7/16/08. (car) (Entered: 07/18/2008)
7/16/2008	68	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, 48, CCA # 08-56061. Order denying appellants' motion for a preliminary injunction order is vacated and remand for further proceedings. Mandate received in this district on 7/16/08. (lr) (Entered: 07/22/2008)
7/25/2008	74	MEMORANDUM in Support Preliminary Injunction filed by Petitioners [Independent Living Center of Southern California, et al.]. (Carman, Lynn) (Entered: 07/25/2008)
7/25/2008	82	ORDER GRANTING AARP'S EX PARTE APPLICATION TO FILE AMICUS CURIAE BRIEF by Judge Christina A. Snyder: Ordered that AARP's Application for Amicus Status 80 is GRANTED. The Court grants AARP amicus status. IT IS FURTHER ORDERED that AARP's amicus curiae proposed brief lodged with the Court on 7/24/2008 is deemed filed as of the date of this Order. (gk) (Entered: 07/28/2008)

7/25/2008	83	Amicus Curiae Brief of AARP in Support of Petitioners filed by Amicus AARP. (gk) (Entered: 07/28/2008)
7/30/2008	95	MEMORANDUM in Opposition to Petitioners' Supplemental Motion for Preliminary Injunction filed by Respondent Sandra Shewry. (Snuggs, Carmen) (Entered: 07/30/2008)
7/31/2008	101	REPLY support of motion REQUEST for Preliminary Injunction re: Request for Judicial Notice 73 filed by Petitioners [Independent Living Center of Southern California, et al.], Respondent Sandra Shewry. (Friedman, Stanley) (Entered: 07/31/2008)
8/3/2008	106	NOTICE Voluntary Dismissal, Without Prejudice, of Third Cause of Action and Fourth Cause of Action filed by Petitioners [Independent Living Center of Southern California, et al.]. Pursuant to Federal Rule of Civil Procedure 41(a)(1) (Friedman, Stanley) (Entered: 08/03/2008)
8/18/2008	121	ORDER GRANTING IN PART AND DENYING IN PART PETITIONERS MOTION FOR PRELIMINARY INJUNCTION by Judge Christina A. Snyder. Denying the parties' various motions to strike as moot. 98 73 99 120. (rmo) (Entered: 08/19/2008)
8/26/2008	127	NOTICE OF APPEAL to the 9th CCA filed by Respondent Sandra

Shewry. Appeal of Preliminary Injunction, Order 121 FEE BILLED. (Ugaz, Sara) Modified on 8/27/2008 (dmap). (Entered: 08/26/2008)

8/27/2008 132 NOTICE OF MOTION AND First MOTION to Alter Judgment re Preliminary Injunction, Order 121. filed by Respondent SANDRA SHEWRY Sandra Shewry. Motion set for hearing on 9/22/2008 at 10:00 AM before Judge Christina A. Snyder. (Attachments: * * *) (Snuggs, Carmen) (Entered: 08/27/2008)

8/27/2008 135 ORDER by Judge Christina A. Snyder, Modifying Preliminary Injunction. 121 132. (rmo) ** ORDER VACATED PURSUANT TO CIVIL MINUTES OF 1/22/2010 323 ** Modified on 1/25/2010 (gk). (Entered: 08/29/2008)

8/29/2008 151 MOTION to Intervene Pursuant to Federal Rule of Civil Procedure 24 and for Leave to File Brief in Opposition to Motion to Alter or Amend filed by Proposed Petitioners in Intervention Sacramento Family Medical Clinics, Inc., Theodore M. Mazer, M.D., Eastern Plumas Health Care District, Pioneers Memorial Health Care Distirct, Kaweah Delta Health Care District, Ronald B. Mead, D.D.S. and Acacia Adult Day Services. Motion set for hearing on 9/22/2008 at 10:00 AM before Judge Christina A. Snyder. (gk) (Entered: 09/09/2008)

8/29/2008	152	MEMORANDUM of Points and Authorities in Support of Motion to Intervene Pursuant to Federal Rule of Civil Procedure 24 151 filed by Proposed Intervenors Sacramento Family Medical Clinics, Inc., Theodore M. Mazer, M.D., Eastern Plumas Health Care District, Pioneers Memorial Health Care District, Kaweah Delta Health Care District, Ronald B. Mead, D.D.S. and Acacia Adult Day Services. (gk) (Entered: 09/09/2008)
9/7/2008	147	Opposition to re: First MOTION to Alter Judgment re Preliminary Injunction, Order 121 .First MOTION to Alter Judgment re Preliminary Injunction, Order 121 . 132 filed by Petitioners [Independent Living Center of Southern California, et al.]. (Attachments: * * *) (Friedman, Stanley) (Entered: 09/07/2008)
9/11/2008	165	REPLY to Petitioners' Opposition to First MOTION to Alter Judgment re Preliminary Injunction, Order 121 .First MOTION to Alter Judgment re Preliminary Injunction, Order 121 . 132 filed by Respondent Sandra Shewry. (Snuggs, Carmen) (Entered: 09/11/2008)
9/15/2008	174	MINUTES OF Motion Hearing held before Judge Christina A. Snyder RE: Proposed Intervenors Motion to Intervene 151: A hearing was held on September 15, 2008. After carefully

		considering the arguments set forth by the parties, the Court finds and concludes as follows. The Court GRANTS the motion to intervene as to proposed intervenors Sacramento Family Medical Clinics, Inc.; Theodore M. Mazer, M.D.; Ronald B. Mead, D.D.S.; and Acacia Adult Day Services. The Court DENIES the motion to intervene as to proposed intervenors Eastern Plumas Health Care District, Pioneers Memorial Health Care District, and Kaweah Delta Health Care District. Refer to document for details of the Order. Court Reporter: Laura Elias. (pso) (Entered: 09/17/2008)
9/15/2008	175	MINUTES OF Motion Hearing held before Judge Christina A. Snyder RE: Respondents Motion to Alter or Amend, and Clarify Order Granting in Part Petitioners Motion for Preliminary Injunction 132. The Court denies respondents request to clarify, alter, or amend the order with regard to clinics, as the record does contain evidence of the effect of the ten percent rate reduction for clinics, and the term clinic is not ambiguous. Refer to document for details of the Order. O[bj]ections 166 and 170 finding as moot. Court Reporter: Laura Elias. (pso) (Entered: 09/17/2008)

9/15/2008	177	NOTICE OF PRELIMINARY INJU[NC]TION APPEAL to the 9th CCA filed by petitioners Tran Pharmacy, Inc., Jason Young. Appeal of Order 135, Preliminary Injunction, Order 121 Filed On: 08/18/2008; Entered On: 08/19/2008; Filing fee $455, PAID; RECEIPT NUMBER: 111271. cc: Lynn S. Carman; Edmund G. Brown, Jr. (dmap) (Entered: 09/18/2008)
9/15/2008	180	NOTICE OF PRELIMIN[A]RY INJUNCTION APPEAL to the 9th CCA filed by Petitioners [Independent Living Center of Southern California, et al.]. Appeal of Order 135, Filed On: 8/27/08; Entered On: 8/29/08; Preliminary Injunction, Order 121 Filed On: 8/18/08; Entered On: 8/19/08; Filing fee $455, Paid. receipt number 111270. cc: Lynn S. Carman; Edmund G. Brown, Jr. (lr) (Entered: 09/18/2008)
9/15/2008	368	COMPLAINT IN INTERVENTION against Respondent Sandra Shewry, Director of the Department of Health Care Services of the State of California, filed by Intervenors Sacramento Family Medical Clinics, Inc., Theodore M. Mazer, M.D., Eastern Plumas Health Care District, Pioneers Memorial Health Care District, Kaweah Delta Health Care District, Ronald B. Mead, D.D.S.,

and Acacia Adult Day Services. (gk) (Entered: 05/25/2010)

9/17/2008 183 ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, 48 filed by [Independent Living Center of Southern California, et al.], CCA # 08-56061. We hereby recall the mandate in this case so that we may file an opinion further describing our order of July 11, 2008, and address any additional petitions for panel rehearing or rehearing en banc. (cbr) (Entered: 09/19/2008)

10/2/2008 191 FIRST AMENDED NOTICE OF APPEAL to 9th CIRCUIT filed by Respondent Sandra Shewry. Amending Notice of Appeal to 9th Circuit Court of Appeals 127 Filed On: 08/26/08; Entered On: 08/26/08; (Kim, Jennifer) (Entered: 10/02/2008)

10/16/2008 200 AMENDED NOTICE OF APPEAL to the 9th CCA [Independent Living Center of Southern California, et al.]. (Friedman, Stanley) Modified on 11/19/2008 (lr). (Entered: 10/16/2008)

10/27/2008 215 NOTICE OF MOTION AND MOTION for Preliminary Injunction re: ENJOIN AB 5 RATE CUT FOR HOME HEALTH SERVICES AND NEMT SERVICES filed by PETITIONERS [Independent Living Center of Southern California, et al.].

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11/3/2008 226 MEMORANDUM in Opposition to MOTION for Preliminary Injunction re: ENJOIN AB 5 RATE CUT FOR HOME HEALTH SERVICES AND NEMT SERVICES 215 filed by Respondent Sandra Shewry. (Attachments: * * *) (Kim, Jennifer) (Entered: 11/03/2008)

11/4/2008 229 NOTICE Petitioners' Notice of Voluntary Dismissal of the Second Cause of Action (Rule 41(a)(1) F.R.C.P.) filed by Petitioners [Independent Living Center of Southern California, et al.]. (Friedman, Stanley) (Entered: 11/04/2008)

11/10/2008 231 REPLY IN SUPPORT MOTION for Preliminary Injunction re: ENJOIN AB 5 RATE CUT FOR HOME HEALTH SERVICES AND NEMT SERVICES 215 filed by Petitioners [Independent Living Center of Southern California, et al.]. (Carman, Lynn) (Entered: 11/10/2008)

11/10/2008 232 REPLY IN SUPPORT MOTION for Preliminary Injunction re: ENJOIN AB 5 RATE CUT FOR HOME HEALTH SERVICES AND NEMT SERVICES 215 filed by Petitioners [Independent Living Center of

Southern California, et al.]. (Carman, Lynn) (Entered: 11/11/2008)

11/17/2008 238 ORDER GRANTING PETITIONERS' THIRD MOTION FOR PRELIMINARY INJUNCTION by Judge Christina A. Snyder: The Court GRANTS Petitioners' Third Motion for Preliminary Injunction 215. The Court hereby orders respondent Director, her agents, servants, employees, attorneys, successors, and all those working in concert with her to refrain from enforcing Cal. Welf. &Inst. Code Section 14105.19(b)(1), including refraining from reducing by ten percent payments under the Medi-Cal fee-for-service program for NEMT and home health services provided on or after 11/17/2008. (gk) (Entered: 11/18/2008)

12/5/2008 242 MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 48, CCA # 08-56061. The decision of the district court is REVERSED and REMANDED. Mandate received in this district on 12/05/08. (cbr) (Entered: 12/09/2008)

12/16/2008 243 NOTICE OF APPEAL to the 9th CCA filed by Respondent Sandra Shewry. Appeal of Order[,] Preliminary Injunction[,] 238. (Filing Fee NOT PAID.) (Kim, Jennifer) (Entered: 12/16/2008)

2/2/2009	255	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, 48, CCA # 08-56061. The Decision of the District Court is REVER[S]ED and REMANDED. Mandate received in this district on 2/02/09. (lr) (Entered: 02/03/2009)
9/15/2009	271	NOTICE OF DISMISSAL filed by PETITIONER Jason Young pursuant to FRCP 41a(1) OF PETITIONER JASON YOUNG ONLY, as to Jason Young, Sandra Shewry. (Carman, Lynn) (Entered: 09/15/2009)
10/29/2009	306	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 243, CCA # 08-57016. The decision of the District Court is AFFIRMED. Mandate received in this district on 10/29/09. (cbr) (Entered: 11/02/2009)
12/3/2009	312	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, 180, Notice of Appeal to 9th Circuit Court of Appeals 127, CCA # 08-56422, 08-56554. The Decision of the District Court is AFFIRMED in part, REVERSED in part, and REMANDED. Mandate received in this district on 12/03/09. (lr) (Entered: 12/04/2009)
12/21/2009	317	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals[,] 180, Notice of Appeal to

		9th Circuit Court of Appeals 127, CCA # 08-56422, 08-56554. The Decision of the District Court is AFFIRMED in part, REVERSED in part, and REMANDED. Mandate received in this district on 12/21/09. (lr) (Entered: 12/22/2009)
1/22/2010	323	MINUTES (In Chambers) Order Amending this Court's 8/18/2008 Order Pursuant to the Ninth Circuit Court of Appeals Mandate Issued 12/21/2009 (08-56422 & 08-56554) by Judge Christina A. Snyder: Pursuant to the mandate from the Ninth Circuit, this Court hereby vacates the 8/27/2008 order modifying the injunction 135, and amends the 8/18/2008 order granting in part and denying in part petitioners' motion for preliminary injunction 121 to change the effective date to 7/1/2008. Accordingly, the Court hereby orders respondent Director, her agents, servants, employees, attorneys, successors, and all those working in concert with her to refrain from enforcing Cal. Welf. & Inst. Code Section 14105.19(b)(1), including refraining from reducing by ten percent payments under the Medi-Cal fee-for-service program for physicians, dentists, pharmacies, adult day health care centers, clinics, health systems, and other providers for services provided on or

after 7/1/2008. Court Reporter: N/A. (gk) (Entered: 01/25/2010)

1/29/2010 328 **MINUTES (IN CHAMBERS) by Judge Christina A. Snyder: Proceedings: Order Re Respondent's 324 Motion to Alter or Amend and Clarify the 1/22/10 Order, Amending the 8/18/08 Injunction 324. The Court finds this motion appropriate for decision without oral argument. Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing date of February 22, 2010, is hereby vacated, and the matter is hereby taken under submission. The Court hereby modifies the third paragraph, set forth at page 2 of its order, as follows: The Court hereby orders respondent Director, her agents, servants, employees, attorneys, successors, and all those working in concert with her to refrain from enforcing Cal. Welf. &Inst. Code § 14105.19(b)(1), including refraining from reducing by ten percent payments under the Medi-Cal fee-for-service program for physicians, dentists, optometrists, prescription drugs, adult day health care centers, and clinics for services provided on or after July 1, 2008. (mg)** (Entered: 02/01/2010)

3/26/2010	362	COMPLAINT IN INTERVENTION against Respondent David Maxwell-Jolly filed by Intervenors California Association of Medical Product Suppliers, California Hospital Association, Sharp Memorial Hospital, Grossmont Hospital Corporation, Sharp Chula Vista Medical Center, and Sharp Coronado Hospital and Healthcare Center.(gk) (Entered: 05/13/2010)
5/24/2010	365	ANSWER to Amended Complaint[,] by Respondent to Petitioners' Verified First Amended Petition for Writ of Mandamus filed by Respondent David Maxwell-Jolly. (Snuggs, Carmen) (Entered: 05/24/2010)
6/2/2010	372	RESPONDENT'S ANSWER TO COMPLAINT IN INTERVENTION ANSWER to Intervenor Complaint, 362 filed by Respondent David Maxwell-Jolly. (Snuggs, Carmen) (Entered: 06/02/2010)

Relevant Docket Entries in the United States Court of Appeals for the Ninth Circuit, *Independent Living Center of Southern California v. Maxwell-Jolly*, No. 08-56422

9/4/2008	5	Filed Appellant Sandra Shewry Civil Appeals Docketing Statement. Served on 09/04/2008. (NEW)
9/23/2008	14	Filed order MOATT: (LL) Appeal No. 08-56422, which seeks review of the district court's August 18, 2008 order, was filed August 26, 2008 and is a preliminary injunction appeal. Appeal No. 08-56551, which seeks review of the district court's August 18, 2008 order, was filed September 15, 2008 and is a preliminary injunction appeal. Appeal No. 08-56554, which seeks review of the district court's August 27, 2008 order, was filed September 15, 2008 and is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply to these appeals. * * * Intervenors-Appellees' request for judicial notice filed in appeal No. 08-56422 is construed as a notice of intervenors-appellees' intervenor status in district court. Because the district court granted intervenors-appellees leave to intervene in the district court action, intervenors-appellees are parties here. See NL Industries, Inc. v. Secretary of Interior, 777 F.2d 433, 436

(9th Cir. 1985). Appellant's "emergency motion for an order denying intervening parties permission to file a brief" and petitioners-appellees' request that intervenors-appellees be designated amicus curiae, both filed in appeal No. 08-56422, are denied as moot. Petitioners-Appellees' request that a prior panel hear appeal No. 08-56422 will be addressed by separate order. * * * These appeals shall be calendared together. [08-56422, 08-56551, 08-56554] (DAF)

9/30/2008 16 Filed order (STEPHEN R. REINHARDT, MARSHA S. BERZON and MILAN D. SMITH, JR.) Pursuant to the Court's rules, appeal Nos. 08-56422, 08-56551, and 08-56554 will be heard by the panel that decided appeal No. 08-56061. Petitioners-appellants' motion to consolidate appeal Nos. 08-56422, 08- 56551, and 08-56554 with appeal No. 08-50561 is denied. Petitioners-appellants' motion for injunctive relief and for costs will be addressed by separate order. Petitioners-appellants' motion to assign preliminary injunction appeal Nos. 08-56422, 08-56551, and 08-56554 to the panel that decided the merits of appeal No. 08-56061 is denied as moot. The briefing schedule established previously in preliminary injunction appeals Nos. 08-56422, 08-56551, and

		08-56554 shall remain in effect. [08-56061, 08-56422, 08-56551, 08-56554] (SC)
10/3/2008	17	Received copy of a motion filed in district court re: respondent's amended notice of preliminary injunction appeal. (EL)
10/3/2008	18	Filed Civil Appeals Docketing Statement for aplt Sandra Shewry; Served on 10/01/2008. (DR)
10/14/2008	19	Submitted (ECF) Opening brief for review. Submitted by Appellant Sandra Shewry in 08-56422, Appellee Sandra Shewry in 08-56551, 08-56554. Date of service: 10/14/2008. [6674088] [08-56422, 08-56551, 08-56554] (JMK)
10/14/2008	22	Filed Appellant Sandra Shewry excerpts of record in 14 volumes. Served on 10/14/2008 (WP)
10/15/2008	21	Filed Opening Brief [19] filed by Sandra Shewry. * * * (PK)
10/17/2008	24	Filed (ECF) Appellees [Independent Living Center of Southern California, Inc., et al.] Civil Appeals Docketing Statement (Form 6). Date of service: 10/17/2008. [6678378] (LSC)
10/17/2008	25	Filed original and 15 copies of Appellants [Independent Living Center of Southern California, Inc., et al.] in 08-56554 (Informal: No) opening brief of 10 pages. Served on

		10/15/2008. [08-56554, 08-56422, 08-56551] (FT)
11/12/2008	28	Submitted (ECF) Intervenor brief for review. Submitted by Appellees Acacia Adult Day Services, Theodore Mazer, M.D., Ronald B. Mead and Sacramento Family Medical Clinics, Inc. in 08-56422. Date of service: 11/12/2008. [6705085] [08-56422, 08-56551, 08-56554] (CC)
11/13/2008	31	Submitted (ECF) Answering brief for review. Submitted by Appellees [Independent Living Center of Southern California, Inc., et al.]. Date of service: 11/13/2008. [6706061] (SLF)
11/14/2008	32	Filed Answering Brief [31] filed by [Independent Living Center of Southern California, Inc., et al.] in 08-56422. * * * (WP)
11/17/2008	34	Filed Answering Brief [28] filed by Sacramento Family Medical Clinics, Inc., Theodore Mazer, M.D., Ronald B. Mead and Acacia Adult Day Services. * * * [08-56422, 08-56551, 08-56554] (WP)
11/19/2008	37	Filed AARP and National Senior Citizen's Law Center motion for leave of court to file amici brief in support of Appellee, served on 11/18/08 (WP)

11/19/2008	39	Filed California Optometric Association motion for leave to file amicus brief, served on 11/19/2008 (WP)
11/19/2008	40	Received original and 15 copies of Amicus Curiae California Optometric Association brief in 7 pages. Deficiency: Motion pending. Served on. 11/19/2008 (WP)
11/21/2008	38	Received original and 15 copies of Amici Curiae AARP and National Senior Citizen's Law Center brief in 22 pages. Deficiency: motion pending Served on. 11/18/2008 (WP)
11/26/2008	43	Submitted (ECF) Reply brief for review. Submitted by Intervenors Acacia Adult Day Services, Theodore Mazer, M.D., Ronald B. Mead and Sacramento Family Medical Clinics, Inc. in 08-56554. Date of service: 11/26/2008. [6720921] [08-56554, 08-56422] (JBK)
11/26/2008	44	Filed Reply Brief [43] filed by Sacramento Family Medical Clinics, Inc., Theodore Mazer, M.D., Ronald B. Mead and Acacia Adult Day Services in 08-56554. * * * [08-56422, 08-56551, 08-56554] (LA)
12/2/2008	47	Submitted (ECF) Reply brief for review. Submitted by Appellant Sandra Shewry. Date of service: 12/01/2008. [6724098] (CDS)
12/3/2008	48	ENTRY UPDATED. Filed Intervenor-Appellee Acacia Adult Day Services

		additional citations. Served on 12/02/2008. (fedex to panel) (EL)
12/3/2008	49	Filed Reply Brief [47] filed by Sandra Shewry. * * * (WP)
12/22/2008	59	Filed order (STEPHEN R. REINHARDT, MARSHA S. BERZON and MILAN D. SMITH, JR.) The California Optometric Association's unopposed motion for leave to file an amicus brief is GRANTED. Respondents shall have until January 15, 2009, to file a response to the Association's amicus brief. [08-56422, 08-56551, 08-56554] (BJB)
12/22/2008	60	Filed order (STEPHEN R. REINHARDT, MARSHA S. BERZON and MILAN D. SMITH, JR.) The motion of AARP, the National Senior Citizens' Law Center, and the National Health Law Program for leave to file an amicus brief is GRANTED. Respondents shall have until January 15, 2009, to file a response to the amicus brief. [08-56422, 08-56551, 08-56554] (BJB)
1/15/2009	64	Filed (ECF) Appellant Sandra Shewry response motion (Amicus Motion, Amicus Motion to become amicus). Date of service: 01/15/2009. [6772775] (CDS)
2/18/2009	70	ARGUED AND SUBMITTED TO STEPHEN R. REINHARDT, MARSHA S. BERZON and MILAN D. SMITH,

JR.. [08-56422, 08-57016, 08-56554] (EU)

4/28/2009 75 (ENTRY UPDATED TO ATTACH CORRECT ORDER) Filed clerk order (Deputy Clerk:BJB): Due to a recent change in circumstances, Judge Berzon has recused herself from this case effective today, and Judge W. Fletcher has been drawn to replace her on the panel. [08-56422, 08-57016, 08-56554] (BJB)

5/7/2009 76 Filed (ECF) Appellees [Independent Living Center of Southern California, Inc., et al.] in 08-56422, Appellants [Independent Living Center of Southern California, Inc., et al.] in 08-56554, 08-57016 citation of supplemental authorities. Date of service: 05/07/2009. [6912789] [08-56422, 08-57016, 08-56554] (SLF)

7/9/2009 81 FILED OPINION (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) The district court properly applied this court's prior decision in Orthopaedic Hospital to hold that Independent Living has demonstrated a likelihood of success on the merits. Moreover, the district court did not abuse its discretion in determining that the balance of hardships tips sharply in Independent Living's favor, as the ten percent rate reduction threatens access

to much-needed medical care. We therefore affirm the district court's order granting in part Independent Living's motion for a preliminary injunction. However, the district court's subsequent order modifying the injunction to apply only to payments for services provided on or after August 18 was based on an erroneous legal standard. The State of California has waived its sovereign immunity against mandamus actions in state courts seeking reimbursement of unlawfully withheld funds, and the Director, by voluntarily removing this case to federal court, waived the State's sovereign immunity in federal court. We therefore reverse the district court's August 18 order modifying the injunction and remand to the district court for further proceedings consistent with this opinion. AFFIRMED in part, REVERSED in part, and REMANDED. Judge: SR, Judge: WAF, Judge: MDS Authoring. FILED AND ENTERED JUDGMENT. [6986365] [08-56422, 08-56554] (PH)

7/23/2009 94 Filed (ECF) Appellant Sandra Shewry petition for panel rehearing and petition for rehearing en banc (from 07/09/2009 opinion). Date of service: 07/23/2009. [7002302] (JMK)

8/17/2009	97	Filed order (MILAN D. SMITH, JR.) Petitioners are directed to file a response to Respondent's Petition for Rehearing En Banc, filed with this court on July 23, 2009. The response shall be filed within 21 days of the date of this order. Per Fed. R. App. P. 32(a)(7)(A), the response shall not exceed fifteen pages in length unless it complies with Fed. R. App. P. 32(a)(7)(B)(ii)-(iii) and (C). [7028875] [08-56422, 08-56554] (BJB)
9/8/2009	98	Filed (ECF) Appellees Acacia Adult Day Services, Mark Beckwith, Margaret Dowling, Gray Panthers of Sacramento, Gray Panthers of San Francisco, Independent Living Center of Southern California, Inc., Theodore Mazer, M.D., Ronald B. Mead, Sacramento Family Medical Clinics, Inc., Jerry Shapiro, Sharon Steen and Jason Young response to Order, Order to set response by any party to anything. Date of service: 09/08/2009. [7055104]. – [COURT spread filing to case 08-56554. 09/09/2009 by MA] (CC)
10/29/2009	101	Filed order (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) The panel has unanimously voted to deny the petition for rehearing. The full court has been advised of the

		petition for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED. [7112659] [08-56422, 08-56554] (BJB)
12/3/2009	106	MANDATE ISSUED. (SR, WAF and MDS) [7150909] [08-56422, 08-56554] (SW)
12/21/2009	112	MANDATE ISSUED. (SR, WAF and MDS) [7170332] [08-56422, 08-56554] (TB)

Relevant Docket Entries in the United States Court of Appeals for the Ninth Circuit, *Independent Living Center of Southern California v. Maxwell-Jolly*, No. 08-56554

9/19/2008	2	Filed Appellants [Independent Living Center of Southern California, Inc., et al.] Civil Appeals Docketing Statement. Served on 09/15/2008. (GR)
9/23/2008	7	Filed order MOATT: (LL) Appeal No. 08-56422, which seeks review of the district court's August 18, 2008 order, was filed August 26, 2008 and is a preliminary injunction appeal. Appeal No. 08-56551, which seeks review of the district court's August 18, 2008 order, was filed September 15, 2008 and is a preliminary injunction appeal. Appeal No. 08-56554, which seeks review of the district court's August 27, 2008 order, was filed September 15, 2008 and is a preliminary injunction appeal. Accordingly, Ninth Circuit Rule 3-3 shall apply to these appeals. * * * Intervenors-Appellees' request for judicial notice filed in appeal No. 08-56422 is construed as a notice of intervenors-appellees' intervenor status in district court. Because the district court granted intervenors-appellees leave to intervene in the district court action, intervenors – appellees are parties

here. See NL Industries, Inc. v. Secretary of Interior, 777 F.2d 433, 436 (9th Cir. 1985). Appellant's "emergency motion for an order denying intervening parties permission to file a brief" and petitioners-appellees' request that intervenors-appellees be designated amicus curiae, both filed in appeal No. 08-56422, are denied as moot. Petitioners-Appellees' request that a prior panel hear appeal No. 08-56422 will be addressed by separate order. * * * These appeals shall be calendared together. [08-56422, 08-56551, 08-56554] (DAF)

9/30/2008 8 Filed order (STEPHEN R. REINHARDT, MARSHA S. BERZON and MILAN D. SMITH, JR.) Pursuant to the Court's rules, appeal Nos. 08-56422, 08-56551, and 08-56554 will be heard by the panel that decided appeal No. 08-56061. Petitioners-appellants' motion to consolidate appeal Nos. 08-56422, 08- 56551, and 08-56554 with appeal No. 08-50561 is denied. Petitioners-appellants' motion for injunctive relief and for costs will be addressed by separate order. Petitioners-appellants' motion to assign preliminary injunction appeal Nos. 08-56422, 08-56551, and 08-56554 to the panel that decided the merits of appeal No. 08-56061 is denied as moot. The briefing

schedule established previously in preliminary injunction appeals Nos. 08-56422, 08-56551, and 08-56554 shall remain in effect. [08-56061, 08-56422, 08-56551, 08-56554] (SC)

10/15/2008 12 Received original and 15 copies of Appellants [Independent Living Center of Southern California, Inc., et al.] opening brief (Informal: No) 10 pages. Served on 10/15/2008. Deficiency: Motion pending. : (FT)

10/15/2008 13 Received Appellants [Independent Living Center of Southern California, Inc., et al.], Appellee Sandra Shewry and Intervenors Acacia Adult Day Services, Theodore Mazer, M.D., Ronald B. Mead and Sacramento Family Medical Clinics, Inc. Notice regarding Adoption of Excerpts of Record already filed in companion appeals 08-56061 and 08-56422. (FT)

10/17/2008 15 Filed original and 15 copies of Appellants [Independent Living Center of Southern California, Inc., et al.] in 08-56554 (Informal: No) opening brief of 10 pages. Served on 10/15/2008. [08-56554, 08-56422, 08-56551] (FT)

10/30/2008 24 Received copy of amended notice of appeal from district court. (BY)

11/12/2008 18 Submitted (ECF) Answering brief for review. Submitted by Appellee

Sandra Shewry. Date of service: 11/12/2008. [6704959] (CDS)

11/12/2008 19 Submitted (ECF) Intervenor brief for review. Submitted by Appellees Acacia Adult Day Services, Theodore Mazer, M.D., Ronald B. Mead and Sacramento Family Medical Clinics, Inc. in 08-56422. Date of service: 11/12/2008. [6705085] [08-56422, 08-56551, 08-56554] (CC)

11/14/2008 21 Filed Answering Brief [18] filed by Sandra Shewry in 08-56554. * * * (FT)

11/17/2008 23 Filed Answering Brief [19] filed by Sacramento Family Medical Clinics, Inc., Theodore Mazer, M.D., Ronald B. Mead and Acacia Adult Day Services. * * * [08-56422, 08-56551, 08-56554] (WP)

11/26/2008 28 Submitted (ECF) Reply brief for review. Submitted by Appellants [Independent Living Center of Southern California, Inc., et al.]. Date of service: 11/26/2008. [6720620] (SLF)

11/26/2008 29 Submitted (ECF) Reply brief for review. Submitted by Intervenors Acacia Adult Day Services, Theodore Mazer, M.D., Ronald B. Mead and Sacramento Family Medical Clinics, Inc. in 08-56554. Date of service: 11/26/2008. [6720921] [08-56554, 08-56422] (JBK)

11/26/2008	30	Filed Reply Brief [29] filed by Sacramento Family Medical Clinics, Inc., Theodore Mazer, M.D., Ronald B. Mead and Acacia Adult Day Services in 08-56554. * * * [08-56422, 08-56551, 08-56554] (LA)
11/26/2008	31	Filed Reply Brief [28] filed by [Independent Living Center of Southern California, Inc., et al.] in 08-56554. * * * (FT)
2/18/2009	47	ARGUED AND SUBMITTED TO STEPHEN R. REINHARDT, MARSHA S. BERZON and MILAN D. SMITH, JR.. [08-56422, 08-57016, 08-56554] (EU)
4/28/2009	51	(ENTRY UPDATED TO ATTACH CORRECT ORDER) Filed clerk order (Deputy Clerk: BJB): Due to a recent change in circumstances, Judge Berzon has recused herself from this case effective today, and Judge W. Fletcher has been drawn to replace her on the panel. [08-56422, 08-57016, 08-56554] (BJB)
5/7/2009	52	Filed (ECF) Appellees [Independent Living Center of Southern California, Inc., et al.] in 08-56422, Appellants [Independent Living Center of Southern California, Inc., et al.] in 08-56554, 08-57016 citation of supplemental authorities. Date of service: 05/07/2009. [6912789] [08-56422, 08-57016, 08-56554] (SLF)

7/9/2009	57	FILED OPINION (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) The district court properly applied this court's prior decision in Orthopaedic Hospital to hold that Independent Living has demonstrated a likelihood of success on the merits. Moreover, the district court did not abuse its discretion in determining that the balance of hardships tips sharply in Independent Living's favor, as the ten percent rate reduction threatens access to much-needed medical care. We therefore affirm the district court's order granting in part Independent Living's motion for a preliminary injunction. However, the district court's subsequent order modifying the injunction to apply only to payments for services provided on or after August 18 was based on an erroneous legal standard. The State of California has waived its sovereign immunity against mandamus actions in state courts seeking reimbursement of unlawfully withheld funds, and the Director, by voluntarily removing this case to federal court, waived the State's sovereign immunity in federal court. We therefore reverse the district court's August 18 order modifying the injunction and remand to

		the district court for further proceedings consistent with this opinion. AFFIRMED in part, REVERSED in part, and REMANDED. Judge: SR, Judge: WAF, Judge: MDS Authoring. FILED AND ENTERED JUDGMENT. [6986365] [08-56422, 08-56554] (PH)
8/17/2009	63	Filed order (MILAN D. SMITH, JR.) Petitioners are directed to file a response to Respondent's Petition for Rehearing En Banc, filed with this court on July 23, 2009. The response shall be filed within 21 days of the date of this order. Per Fed. R. App. P. 32(a)(7)(A), the response shall not exceed fifteen pages in length unless it complies with Fed. R. App. P. 32(a)(7)(B)(ii)-(iii) and (C). [7028875] [08-56422, 08-56554] (BJB)
9/8/2009	64	Filed (ECF) Appellees Acacia Adult Day Services, Mark Beckwith, Margaret Dowling, Gray Panthers of Sacramento, Gray Panthers of San Francisco, Independent Living Center of Southern California, Inc., Theodore Mazer, M.D., Ronald B. Mead, Sacramento Family Medical Clinics, Inc., Jerry Shapiro, Sharon Steen and Jason Young response to Order, Order to set response by any party to anything. Date of service: 09/08/2009. [7055104]. – [COURT

		spread filing to case 08-56554. 09/09/2009 by MA] (CC)
10/29/2009	67	Filed order (STEPHEN R REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) The panel has unanimously voted to deny the petition for rehearing. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED. [7112659] [08-56422, 08-56554] (BJB)
12/3/2009	72	MANDATE ISSUED. (SR, WAF and MDS) [7150909] [08-56422, 08-56554] (SW)
12/21/2009	78	MANDATE ISSUED. (SR, WAF and MDS) [7170332] [08-56422, 08-56554] (TB)

Relevant Docket Entries in the United States Court of Appeals for the Ninth Circuit, *Independent Living Center of Southern California v. Maxwell-Jolly*, No. 08-57016

12/17/2008	3	Filed Appellants Department of Health Care Services and Sandra Shewry Civil Appeals Docketing Statement. Served on 12/16/2008. (GR)
1/16/2009	9	Submitted (ECF) Opening brief for review. Submitted by Appellant Sandra Shewry. Date of service: 01/16/2009. [6773973] (CDS)
1/16/2009		Filed Opening Brief [9] filed by Sandra Shewry. * * * (WP)
1/20/2009	11	Filed Appellant Sandra Shewry excerpts of record in 2 volumes. Served on 01/16/2009 (PANEL) (WP)
1/29/2009	13	Submitted (ECF) Answering brief for review. Submitted by Appellees [Independent Living Center of Southern California, Inc., et al.]. Date of service: 01/29/2009. [6790444] (SLF)
1/30/2009		Filed Answering Brief [13] filed by [Independent Living Center of Southern California, Inc., et al.] in 08-57016. * * * (WP)
2/2/2009	14	Submitted (ECF) Reply brief for review. Submitted by Appellant Sandra

		Shewry. Date of service: 02/02/2009. [6793867] (CDS)
2/3/2009		Filed Reply Brief [14] filed by Sandra Shewry. * * * (PANEL) (WP)
2/18/2009	21	ARGUED AND SUBMITTED TO STEPHEN R. REINHARDT, MARSHA S. BERZON and MILAN D. SMITH, JR.. [08-56422, 08-57016, 08-56554] (EU)
4/28/2009	25	(ENTRY UPDATED TO ATTACH CORRECT ORDER) Filed clerk order (Deputy Clerk: BJB): Due to a recent change in circumstances, Judge Berzon has recused herself from this case effective today, and Judge W. Fletcher has been drawn to replace her on the panel. [08-56422, 08-57016, 08-56554] (BJB)
5/7/2009	26	Filed (ECF) Appellees [Independent Living Center of Southern California, Inc., et al.] in 08-56422, Appellants [Independent Living Center of Southern California, Inc., et al.] in 08-56554, 08-57016 citation of supplemental authorities. Date of service: 05/07/2009. [6912789] [08-56422, 08-57016, 08-56554] (SLF)
8/7/2009	30	FILED MEMORANDUM DISPOSITION (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) AFFIRMED. FILED AND ENTERED JUDGMENT. [7019649] (DD)

8/21/2009	36	Filed (ECF) Appellants Department of Health Care Services and Sandra Shewry petition for rehearing en banc (from 08/07/2009 memorandum). Date of service: 08/21/2009. [7037139] (GDB)
9/23/2009	37	Filed order (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.): The panel has unanimously voted to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it. The petition for rehearing en banc is DENIED. [7071317] (AF)
10/29/2009	38	MANDATE ISSUED. (SR, WAF and MDS) [7111877] (RR)

Relevant Docket Entries in the United States District Court for the Central District of California, *Independent Living Center of Southern California, Inc. v. Maxwell-Jolly*, No. CV 09-382 CAS (MANx)

Date	No.	Docket Text
1/16/2009	1	COMPLAINT against Defendant David Maxwell-Jolly. (Filing fee $350: FEE PAID.), filed by plaintiffs Sharon Steen, Tran Pharmacy, Inc., Managed Pharmacy Care, Independent Living Center of Southern California, Inc., Gerald Shapiro. (ghap) (Additional attachment(s) added on 1/21/2009: # 1 Notice of Assignment, # 2 Civil Cover Sheet) (ds). (Additional attachment(s) added on 1/21/2009: # 3 Summons) (ds). (Entered: 01/20/2009)
2/2/2009	10	NOTICE OF MOTION AND MOTION for Preliminary Injunction re: [TO] ENJOIN 5% PHARMACY RATE CUT AND PLAINTIFFS' MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION filed by PLAINTIFFS Sharon Steen, Tran Pharmacy, Inc., Independent Living Center of Southern California, Inc., Gerald Shapiro. Motion set for hearing on 2/23/2009 at 10:00 AM before Judge Christina A. Snyder. (Carman, Lynn) (Entered: 02/02/2009)

2/11/2009	24	OPPOSITION DEFENDANTS OPPOSITION TO PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION re: MOTION for Preliminary Injunction re: [TO] ENJOIN 5% PHARMACY RATE CUT AND PLAINTIFFS' MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION 10 filed by Defendant David Maxwell-Jolly. (Attachments: * * *) (Kim, Jennifer) (Entered: 02/11/2009)
2/13/2009	25	NOTICE NOTICE [sic] OF ERRATA RE: DEFENDANT'S OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION filed by Defendant David Maxwell-Jolly. (Kim, Jennifer) (Entered: 02/13/2009)
2/16/2009	26	REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION MOTION for Preliminary Injunction re: [TO] ENJOIN 5% PHARMACY RATE CUT AND PLAINTIFFS' MEMORANDUM IN SUPPORT OF PRELIMINARY INJUNCTION 10 filed by Plaintiffs Sharon Steen, Tran Pharmacy, Inc., Independent Living Center of Southern California, Inc., Gerald Shapiro. (Attachments: * * *) (Carman, Lynn) (Entered: 02/16/2009)
2/19/2009	28	ANSWER TO COMPLAINT filed by Defendant David Maxwell-Jolly. (Kim, Jennifer) (Entered: 02/19/2009)

2/23/2009	30	NOTICE OF LODGING filed AND LODGING OF ORDER IN SANTA ROSA MEMORIAL HOSPITAL, ET AL v DAVID MAXWELL-JOLLY re Objection/Opposition (Motion related) * * * 24 (Kim, Jennifer) (Entered: 02/23/2009)
2/23/2009	36	MINUTES OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION (filed 02/02/09) held before Judge Christina A. Snyder: Hearing held and counsel are present. Tentative order provided. The Court confers with counsel and counsel argue. The Court takes plaintiffs' motion under submission. The Court will issue a final ruling. Court Reporter: Laura Elias. (bm) (Entered: 03/02/2009)
2/27/2009	34	ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION by Judge Christina A. Snyder: The Court GRANTS Plaintiffs' Motion for Preliminary Injunction 10. The Court hereby orders respondent Director, his agents, servants, employees, attorneys, successors, and all those working in concert with him to refrain from enforcing Cal. Welf. & Inst. Code Section 14105.191(b)(3), as modified by AB 1183 beginning on March 1, 2009, by refraining from reducing by five percent payments to pharmacies

for prescription drugs (including prescription drugs and traditional over-the counter drugs provided by prescription) provided under the Medi-Cal fee-for-service program. (gk) (Entered: 02/27/2009)

3/13/2009 38 NOTICE OF MOTION AND MOTION for Preliminary Injunction re: DEFENDANTS MOTION TO ALTER OR AMEND, AND CLARIFY ORDER GRANTING PLAINTIFFS; MOTION FOR PRELIMINARY INJUNCTION filed by Defendant David Maxwell-Jolly. Motion set for hearing on 4/6/2009 at 10:00 AM before Judge Christina A. Snyder. (Attachments: * * *) (Cardenas, Jesse) (Entered: 03/13/2009)

3/13/2009 40 NOTICE OF MOTION re MOTION for Preliminary Injunction re: DEFENDANTS MOTION TO ALTER OR AMEND, AND CLARIFY ORDER GRANTING PLAINTIFFS; MOTION FOR PRELIMINARY INJUNCTION 38 filed by Defendant David Maxwell-Jolly. Motion set for hearing on 4/6/2009 at 10:00 AM before Judge Christina A. Snyder. (Cardenas, Jesse) (Entered: 03/13/2009)

3/23/2009 42 OPPOSITION TO DEFENDANT'S MOTION TO ALTER OR AMEND, AND CLARIFY FEB. 27, 2009 ORDER filed by Plaintiffs Sharon

Steen, Tran Pharmacy, Inc., Independent Living Center of Southern California, Inc., Gerald Shapiro. (Attachments: * * *) (Carman, Lynn) (Entered: 03/23/2009)

3/30/2009 43 REPLY BRIEF TO PLAINTIFF'S OPPOSITION to MOTION for Preliminary Injunction re: DEFENDANTS MOTION TO ALTER OR AMEND, AND CLARIFY ORDER GRANTING PLAINTIFFS; MOTION FOR PRELIMINARY INJUNCTION 38 filed by Defendant David Maxwell-Jolly. (Cardenas, Jesse) (Entered: 03/30/2009)

4/3/2009 44 MINUTES (IN CHAMBERS) by Judge Christina A. Snyder: The Court DENIES Defendant's Motion to Alter, Amend, or Clarify the Court's 2/27/2009 Order 38. Court Reporter: Not Present. (gk) (Entered: 04/03/2009)

4/30/2009 46 NOTICE OF PRELIMINARY INJUNCTION APPEAL filed by Defendant David Maxwell-Jolly. (Attachments: # 1 US Court of Appeals for the 9th Circuit Civi[l] A[p]peals Docketing Statement) (Kim, Jennifer) (Entered: 04/30/2009)

5/6/2009 47 NOTICE OF APPEAL to the 9th CCA filed by Defendant David Maxwell-Jolly. (Filing Fee PAID.) (Attachments: # 1 NOTICE OF

		ERROR IN AND CORRECTION TO DOCKET, # 2 NOTICE OF PRELIMINARY INJUNCTION APPEAL, # 3 US COURT OF APPEALS FOR THE NINTH CIRCUIT CIVIL APPEALS DOCKETING STATEMENT) (Kim, Jennifer) (Entered: 05/06/2009)
3/25/2010	74	MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals, 47, CCA # 09-55692. The Decision of the District Court is AFFIRMED. Mandate received in this district on 3/25/2010. (lr) (Entered: 03/26/2010)

Relevant Docket Entries in the United States Court of Appeals for the Ninth Circuit, *Independent Living Center of Southern California, Inc. v. Maxwell-Jolly*, No. 09-55692

Date	No.	Docket Text
5/7/2009	3	Filed Appellant David Maxwell-Jolly Civil Appeals Docketing Statement. Served on 04/30/2009. (JN)
6/17/2009	15	Filed Appellant David Maxwell-Jolly four excerpts of record in 4 volumes. Served on 06/16/2009. [6970843] (GLS)
6/19/2009	12	Submitted (ECF) Opening brief for review. Submitted by Appellant David Maxwell-Jolly. Date of service: 06/16/2009. [6963358] (EB)
6/22/2009	13	Filed clerk order: Opening Brief [12] filed by David Maxwell-Jolly. * * * [6963934] (GLS)
7/29/2009	18	Submitted (ECF) Answering brief for review * * *. Submitted by Appellees Independent Living Center of Southern California, Inc., Gerald Shapiro, Sharon Steen and Tran Pharmacy, Inc.. Date of service: 07/29/2009. [7008929] – [COURT attached certificate of service from deleted entry [7007388]. 08/18/2009 by MA] (LSC)
7/29/2009	19	Received Appellees Independent Living Center of Southern California, Inc., Gerald Shapiro, Sharon Steen and Tran Pharmacy, Inc. four

		supplemental excerpt of record on appeal in 1 volume entitled "Volume 5." Deficiency: motion pending. (SHELF). [7013504] (GLS)
8/4/2009	23	Filed clerk order: Answering Brief [18] filed by Independent Living Center of Southern California, Inc., Gerald Shapiro, Sharon Steen and Tran Pharmacy, Inc. * * * [7017106] (GLS)
8/4/2009	24	Filed Appellees Independent Living Center of Southern California, Inc., Gerald Shapiro, Sharon Steen and Tran Pharmacy, Inc. four supplemental excerpts of record on appeal in 1 volume entitled "Volume 5." [7017215] (GLS)
8/18/2009	27	Submitted (ECF) Reply brief for review. Submitted by Appellant David Maxwell-Jolly. Date of service: 08/18/2009. [7032074] (EB)
8/29/2009	28	Filed clerk order: Reply Brief [27] filed by David Maxwell-Jolly. * * * [7032468] (GLS)
1/19/2010	54	ARGUED AND SUBMITTED TO STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.. [7198958] (LN)
1/26/2010	55	Filed (ECF) Appellant David Maxwell-Jolly citation of supplemental authorities. Date of service: 01/26/2010. [7207601] (DP)

2/2/2010	56	Filed (ECF) Appellees Independent Living Center of Southern California, Inc., Jerry Shapiro, Sharon Steen and Tran Pharmacy, Inc. Correspondence: INFORMATION REQUESTED BY THE COURT AT ORAL ARGUMENT. Date of service: 02/02/2010 [7217528] (LSC)
2/2/2010	57	Filed (ECF) Appellees Independent Living Center of Southern California, Inc., Jerry Shapiro, Sharon Steen and Tran Pharmacy, Inc. Correspondence: CORRECTION OF CLERICAL ERROR TO SUBSTITUTE THE CORRECT "EXHIBIT B" TO LETTER FILED BY APPEL[L]EES EARLIER THIS DATE OF FEBRUARY 2, 2010. Date of service: 02/02/2010 [7217649] (LSC)
2/8/2010	58	Filed (ECF) Appellant David Maxwell-Jolly citation of supplemental authorities. Date of service: 02/08/2010. [7223037] (DP)
3/3/2010	59	FILED MEMORANDUM DISPOSITION (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) AFFIRMED. FILED AND ENTERED JUDGMENT. [7250755] (PH)
3/25/2010	60	MANDATE ISSUED. (SR, WAF and MDS) [7278995] (LC)

Relevant Docket Entries in the United States District Court for the Central District of California, *California Pharmacists Association v. Maxwell-Jolly*, No. CV 09-722 CAS (MANx)

Date	No.	Docket Text
1/29/2009	1	COMPLAINT against Defendant David Maxwell-Jolly. (Filing fee $350 PAID.), filed by Plaintiffs [California Pharmacists Association, et al.]. (et) (ds). (Entered: 02/02/2009)
2/11/2009	13	NOTICE OF MOTION AND MOTION for Preliminary Injunction re: Implementation of rate reduction for pharmacies and adult day health care centers filed by Plaintiffs [California Pharmacists Association, et al.]. Motion set for hearing on 3/9/2009 at 10:00 AM before Judge Christina A. Snyder. (Attachments: * * *) (Sze, Felicia) (Entered: 02/11/2009)
2/13/2009	16	NOTICE OF MOTION AND MOTION for Preliminary Injunction re: AB 1183 Rate Reductions for Hospital Services filed by Plaintiffs [California Pharmacists Association, et al.]. Motion set for hearing on 3/9/2009 at 10:00 AM before Judge Christina A. Snyder. (Attachments: * * *) (Bookman, Lloyd) (Entered: 02/13/2009)
2/26/2009	22	MEMORANDUM in Opposition to MOTION for Preliminary Injunction

re: Implementation of rate reduction for pharmacies and adult day health care centers 13 filed by Defendant David Maxwell-Jolly. (Attachments: * * *) (Kim, Jennifer) (Entered: 02/27/2009)

2/27/2009 23 MEMORANDUM in Opposition to MOTION for Preliminary Injunction re: AB 1183 Rate Reductions for Hospital Services 16 filed by Defendant David Maxwell-Jolly. (Attachments: * * *) (Kim, Jennifer) (Entered: 02/27/2009)

3/4/2009 25 REPLY in support MOTION for Preliminary Injunction re: AB 1183 Rate Reductions for Hospital Services 16 filed by Plaintiffs [California Pharmacists Association, et al.]. (Attachments: * * *) (Keville, Jordan) (Entered: 03/04/2009)

3/4/2009 26 REPLY to Opposition to Motion for Preliminary Injunction filed by Plaintiffs [California Pharmacists Association, et al.]. (Cannizzo, Craig) (Entered: 03/04/2009)

3/4/2009 29 LODGMENT OF STATE AUTHORITIES re MOTION for Preliminary Injunction re: Implementation of rate reduction for pharmacies and adult day health care centers 13 (REPLY TO OPPOSITION) filed by Plaintiffs [California Pharmacists Association,

et al.]. (Cannizzo, Craig) (Entered: 03/04/2009)

3/5/2009	30	ANSWER to Complaint – (Discovery), Complaint – (Discovery), Complaint – (Discovery) 1 filed by Defendant David Maxwell-Jolly. (Murphy, Randall) (Entered: 03/05/2009)
3/5/2009	31	SUPPLEMENT to MOTION for Preliminary Injunction re: AB 1183 Rate Reductions for Hospital Services 16 Lodgment of State Authority in Support of Reply filed by Plaintiffs [California Pharmacists Association, et al.]. (Attachments: * * *) (Keville, Jordan) (Entered: 03/05/2009)
3/9/2009	35	ORDER by Judge Christina A. Snyder GRANTING Plaintiffs' MOTION for Preliminary Injunction as to Adult Day Health Centers 13. The Court GRANTS plaintiffs' motion for preliminary injunction. The Court hereby orders respondent Director, his agents, servants, employees, attorneys, successors, and all those working in concert with him to refrain from enforcing Cal. Welf. & Inst. Code § 14105.191, as modified by AB 1183 beginning on March 9, 2009, by refraining from reducing by five percent payments to ADHCs provided under the Medi-Cal fee-for-service program. (mg) (Entered: 03/10/2009)

3/9/2009	36	ORDER by Judge Christina A. Snyder DENYING Plaintiffs' MOTION for Preliminary Injunction as to Hospitals 16. The Court DENIES plaintiffs' motion for preliminary injunction with regard to AB 1183's reimbursement rate reduction to hospitals, without prejudice to its being renewed after the Ninth Circuit rules on the appeal in Independent Living Center of Southern California, Inc. v. Sandra Shewry, CV-08-3315-CAS. (mg) TT (Entered: 03/10/2009)
3/11/2009	40	NOTICE OF APPEAL to the 9th CCA filed by Plaintiffs [California Pharmacists Association, et al.]. Appeal of Order, 36. (Filing fee $455, receipt number 09730000000005018086.) (Attachments: * * *) (Keville, Jordan) (Entered: 03/11/2009)
3/11/2009	41	FIRST AMENDED NOTICE OF APPEAL to 9th CIRCUIT filed by Plaintiffs California Hospital Association, Sharp Memorial Hospital, Grossmont Hospital Corporation, Sharp Chula Vista Medical Center, Sharp Coronado Hospital and Healthcare Center. Amending Notice of Appeal to 9th Circuit Court of Appeals, 40 Filed On: 3/11/09; Entered On: 3/11/09; (Attachments:

		* * *) (Keville, Jordan) (Entered: 03/11/2009)
4/6/2009	55	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals[,] 40 filed by [California Pharmacists Association, et al.], CCA # 09-55365. The Plaintiffs MOTION FOR STAY PENDING APPEAL IS GRANTED. Order received in this district on 4/06/09. (lr) (Entered: 04/10/2009)
4/7/2009	50	NOTICE OF APPEAL to the 9th CCA filed by Defendant David Maxwell-Jolly. Appeal of Order[,] 35. (Kim, Jennifer) (Entered: 04/07/2009)
5/28/2009	65	ORDER from 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals[,] 40 filed by [California Pharmacists Association, et al.], CCA # 09-55365. We consider the Urgent Motion for Clarification Pursuant to Circuit Rules 27-3(b) and 27-10 filed by Plaintiffs-Appellants California Pharmacists Association, et al. (the Hospital Plaintiffs). The Hospital Plaintiffs filed the instant motion more than fourteen days after the date of our April 6, 2009 Order, in violation of Circuit Rule 27-10(a). Nevertheless, we find that the Hospital Plaintiffs were not, and could not have been, aware of the matter in which the

Director would implement our Order until after the fourteen-day period had passed. Under the circumstances, and pursuant to Circuit Rule 27-10(a), we enlarge the said fourteen-day period, and consider the motion. We resolve the Hospital Plaintiffs' motion and clarify our April 6, 2009 Order as follows: Those sections, or portions of sections, of the California Welfare and Institutions Code added or amended by Assembly Bill 5 that were not purportedly amended or deleted by the text of California Assembly Bill 1183 are not covered by, nor is the implementation thereof stayed by, our April 6, 2009 Order. Order received in this district on 5/28/09. (lr) (Entered: 06/01/2009)

3/25/2010 77 MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 50, CCA # 09-55532. The decision of the district court is affirmed. Mandate received in this district on 3/25/2010. (dmap) (Entered: 03/26/2010)

3/25/2010 78 MANDATE of 9th CCA filed re: Notice of Appeal to 9th Circuit Court of Appeals 40, CCA # 09-55365. The decision of the district court is affirmed. Mandate received in this district on 3/25/2010. (dmap) (Entered: 03/26/2010)

4/16/2010 81 MINUTES (IN CHAMBERS): Order Vacating this Court's 3/9/2009 Order and Granting Plaintiffs' Motion for Preliminary Injunction Pursuant to the Ninth Circuit Court of Appeals Mandate Issued 3/25/2010 (09-55365) by Judge Christina A. Snyder: Pursuant to the mandate from the Ninth Circuit, this Court hereby vacates the 3/9/2009 order denying plaintiffs' motion for preliminary injunction with regard to AB 1183's reimbursement rate reduction to hospitals 36. Accordingly, the Court hereby grants plaintiffs' Motion for Preliminary Injunction 46 and orders respondent Director, his agents, servants, employees, attorneys, successors, and all those working in concert with him to refrain from enforcing Cal. Welf. & Inst. Code Section 14105.191 and 14166.245, as modified by AB 1183, beginning on April 16, 2010, by refraining from reducing by five percent payments to hospitals for services provided under the Medi-Cal fee-for-service program, which include non-contract inpatient hospital services, outpatient services, Distinct Part Nursing Facilities, and subacute services. Court Reporter: Not Present. (gk) (Entered: 04/16/2010)

6/16/2010 86 ORDER by Judge Christina A. Snyder GRANTING Joint Motion for

Modification of Court's April 16, 2010 Preliminary Injunction Order 84. The Court's April 16 order will be amended to read as follows Pursuant to the mandate from the Ninth Circuit, this Court hereby vacates the March 9, 2009 order denying plaintiffs' motion for a preliminary injunction with regard to AB 1183's reimbursement rate reduction to hospitals. According, the Court hereby grants plaintiffs' motion for preliminary injunction and orders respondent Director, his agents, servants, employees, attorneys, successors, and all those working in concert with him to refrain from enforcing Cal. Welf. & Inst. Code 14105.191 and 14166.245 with respect to services provided under the fee-for-service Medi-Cal program, by refraining. (See attached Order for further information). (jp) (Entered: 06/17/2010)

Relevant Docket Entries in the United States Court of Appeals for the Ninth Circuit, *California Pharmacists Association v. Maxwell-Jolly*, No. 09-55365

Date	No.	Docket Text
3/12/2009	2	Filed Appellants' Civil Appeals Docketing Statement. Served on 03/11/2009. (FB)
3/12/2009	6	Filed (ECF) Appellants California Hospital Association, Grossmont Hospital Corporation, Sharp Chula Vista Medical Center, Sharp Coronado Hospital and Healthcare Center and Sharp Memorial Hospital EMERGENCY Motion for injunction pending appeal. Date of service: 03/12/2009. [6843589] (JBK)
3/19/2009	10	Filed (ECF) Appellee David Maxwell-Jolly response opposing motion (Civil Appeals Docketing Stmnt Forms). Date of service: 03/18/2009. [6852022] (JMK)
3/20/2009	11	Filed (ECF) Appellants California Hospital Association, Grossmont Hospital Corporation, Sharp Chula Vista Medical Center, Sharp Coronado Hospital and Healthcare Center and Sharp Memorial Hospital reply to response (Response to Motion (ECF Filing)). Date of service: 03/20/2009. [6853670] (JBK)

4/6/2009	21	Filed Order for PUBLICATION In light of the showing made by the Hospital Plaintiffs in this case, we grant their motion for an order staying the rate cuts in AB 1183 with respect to the specified hospital services pending their appeal to this court of the district court's order denying the motion for preliminary injunction. MOTION FOR STAY PENDING APPEAL IS GRANTED.(STEPHEN R. REINHARDT, MARSHA S. BERZON and MILAN D. SMITH, JR.) (PH)
4/9/2009	26	Submitted (ECF) Opening brief for review. Submitted by Appellants California Hospital Association, Grossmont Hospital Corporation, Sharp Chula Vista Medical Center, Sharp Coronado Hospital and Healthcare Center and Sharp Memorial Hospital. Date of service: 04/09/2009. [6878244] (JBK)
4/9/2009		Filed clerk order: Opening Brief [26] filed by California Hospital Association, Sharp Memorial Hospital, Grossmont Hospital Corporation, Sharp Chula Vista Medical Center and Sharp Coronado Hospital and Healthcare Center in 09-55365. * * * (LA)
4/9/2009	27	Filed Appellants' excerpts of record in 9 volumes. Served on 04/08/2009 (LA)

4/20/2009	29	Filed (ECF) Appellee David Maxwell-Jolly motion for reconsideration of nondispositive Judge Order of 04/06/2009. Date of service: 04/20/2009. [6889606] (JMK)
5/7/2009	32	Submitted (ECF) Answering brief for review. Submitted by Appellee David Maxwell-Jolly. Date of service: 05/06/2009. [6913545] (JMK)
5/7/2009		Filed clerk order: Answering Brief [32] filed by David Maxwell-Jolly. * * * (LA)
5/7/2009	33	Filed Appellee David Maxwell-Jolly supplemental excerpts of record on appeal in 1 volume. (LA)
5/13/2009	34	Filed (ECF) Appellant California Hospital Association in 09-55365 Urgent Motion for miscellaneous relief [Urgent Motion for Clarification Pursuant to Circuit Rules 27-3(B) and 27-10]. Date of service: 05/13/2009. [6919269] [09-55365, 09-55532] (JBK)
5/21/2009	37	Filed (ECF) Appellant California Hospital Association in 09-55365 reply to response (Motion (ECF Filing), Motion (ECF Filing) motion for miscellaneous relief (to be used only if no other relief applies), Response to Motion (ECF Filing)). Date of service: 05/21/2009. [6929294] [09-55365, 09-55532] (JBK)

5/26/2009	39	Filed order (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) Plaintiffs-Appellants are directed to file a response to Defendant-Appellee's Petition for Rehearing En Banc, filed with this court on April 20, 2009. The response shall not exceed 15 pages, shall be filed within 21 days of the date of this order, and Plaintiff-Appellant shall provide this court with 50 copies of any such response. (SC)
5/28/2009	44	Filed order (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) The Hospital Plaintiffs filed the instant motion more than fourteen days after the date of our April 6, 2009 Order, in violation of Circuit Rule 27-10(a). Nevertheless, we find that the Hospital Plaintiffs were not, and could not have been, aware of the manner in which the Director would implement our Order until after the fourteen-day period had passed. Under the circumstances, and pursuant to Circuit Rule 27-10(a), we enlarge the said fourteen-day period, and consider the motion. We resolve the Hospital Plaintiffs' motion and clarify our April 6, 2009 Order as follows: Those sections, or portions of sections, of the California Welfare and Institutions Code added

		or amended by Assembly Bill 5 that were not purportedly amended or deleted by the text of California Assembly Bill 1183 are not covered by, nor is the implementation thereof stayed by, our April 6, 2009 Order. (SC)
6/1/2009	45	Submitted (ECF) Reply brief for review. Submitted by Appellants California Hospital Association, Grossmont Hospital Corporation, Sharp Chula Vista Medical Center, Sharp Coronado Hospital and Healthcare Center and Sharp Memorial Hospital. Date of service: 06/01/2009. [6939979] (JBK)
6/15/2009		Filed clerk order: Reply Brief [45] filed by California Hospital Association, Sharp Memorial Hospital, Grossmont Hospital Corporation, Sharp Chula Vista Medical Center and Sharp Coronado Hospital and Healthcare Center. * * * (LA)
6/16/2009	49	Filed (ECF) Appellants California Hospital Association, Grossmont Hospital Corporation, Sharp Chula Vista Medical Center, Sharp Coronado Hospital and Healthcare Center and Sharp Memorial Hospital response to petition for rehearing en banc. Date of service: 06/16/2009. [6958844]. [Court corrected docket text to reflect filing – 6/26/09 by SS] (JBK)

8/24/2009	51	Filed order (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) The panel has unanimously voted to deny the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on it. Fed. R. App. P. 35. The petition for rehearing en banc is DENIED. [7037978] (SC)
1/19/2010	63	ARGUED AND SUBMITTED TO STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.. [7199044] [09-55365, 09-55532] (LN)
3/3/2010	64	FILED MEMORANDUM DISPOSITION (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) REVERSED AND REMANDED. FILED AND ENTERED JUDGMENT. [7250739] (PH)
3/25/2010	65	MANDATE ISSUED. (SR, WAF and MDS) [7278452] (GV)

Relevant Docket Entries in the United States Court of Appeals for the Ninth Circuit, *California Pharmacists Association v. Maxwell-Jolly*, No. 09-55532

Date	No.	Docket Text
4/8/2009	3	Filed Appellant David Maxwell-Jolly Civil Appeals Docketing Statement. Served on 04/07/2009. (BG)
5/19/2009	11	Submitted (ECF) Opening brief for review. Submitted by Appellant David Maxwell-Jolly. Date of service: 05/19/2009. [6926567] (GMC)
5/20/2009	13	Filed Appellant David Maxwell-Jolly excerpts of record in 5 volumes. Served on 05/19/2009 (PK)
5/26/2009	15	Filed clerk order: Opening Brief [11] filed by David Maxwell-Jolly. * * * (LA)
6/30/2009	20	Submitted (ECF) Answering brief for review. Submitted by Appellees Acacia Adult Day Services, California Association For Adult Day Services, Charles Gallagher and Fey Garcia. Date of service: 06/30/2009. [6975733] (JBK)
7/2/2009	21	Filed clerk order: Answering Brief [20] filed by Acacia Adult Day Services, California Association For Adult Day Services, Fey Garcia and Charles Gallagher. * * * [6979134] (PK)

7/28/2009	23	Submitted (ECF) Reply brief for review. Submitted by Appellant David Maxwell-Jolly. Date of service: 07/28/2009. [7007163] (GMC)
7/30/2009	24	Filed clerk order: Reply Brief [23] filed by David Maxwell-Jolly. * * * [7010403] (PK)
1/19/2010	36	ARGUED AND SUBMITTED TO STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.. [7199044] [09-55365, 09-55532] (LN)
3/3/2010	37	FILED OPINION (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) AFFIRMED. Judge: MDS Authoring. FILED AND ENTERED JUDGMENT. [7250575] (RP)
3/25/2010	38	MANDATE ISSUED. (SR, WAF and MDS) [7278098] (SW)

Relevant Docket Entries in the United States District Court for the Northern District of California, *Dominguez v. Schwarzenegger*, No. CV 09-2306 CW

Date	No.	Docket Text
5/26/2009	1	COMPLAINT against Arnold Schwarzenegger, John A. Wagner, David Maxwell-Jolly, John Chiang, Fresno County, Fresno County In-Home Supportive Services Public Authority (Filing fee $350, receipt number 34611032471.). Filed by [Lydia Dominguez, et al.]. (Attachments: * * *) (cp, COURT STAFF) (Filed on 5/26/2009) (Entered 5/27/2009)
06/04/2009	5	MOTION for Preliminary Injunction; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT filed by [Lydia Dominguez, et al.] (Leyton, Stacey) (Filed on 6/4/2009) Modified on 6/5/2009 (cp, COURT STAFF). (Entered: 06/04/2009)
6/15/2009	95	Memorandum in Opposition to 5 MOTION for Preliminary Injunction filed by David Maxwell-Jolly, Arnold Schwarzenegger, John A. Wagner. (Carson, Susan) (Filed on 6/15/2009) Modified on 6/16/2009 (kc, COURT STAFF). (Entered: 06/15/2009)
6/19/2009	110	Reply Memorandum re 5 MOTION for Preliminary Injunction filed by [Lydia Dominguez, et al.]. (Leyton,

Stacey) (Filed on 6/19/2009) (Entered: 06/19/2009)

6/22/2009 126 STATEMENT OF RECENT DECISION pursuant to Civil Local Rule 7-3.d filed by [Lydia Dominguez, et al.]. (Attachments: * * *) (Related document(s) 5) (Leyton, Stacey) (Filed on 6/22/2009) (Entered: 06/22/2009)

6/26/2009 130 PRELIMINARY INJUNCTION. Signed by Judge Claudia Wilken on 6/26/09. (cwlc2, COURT STAFF) (Filed on 6/26/2009) (Entered: 06/26/2009)

6/26/2009 131 ORDER by Judge Claudia Wilken granting 5 Motion for Preliminary Injunction (cwlc2, COURT STAFF) (Filed on 6/26/2009) (Entered: 06/26/2009)

6/29/2009 138 NOTICE OF APPEAL as to 130 Preliminary Injunction, 131 Order on Motion for Preliminary Injunction by John Chiang, David Maxwell-Jolly, Arnold Schwarzenegger, John A. Wagner. (cp, COURT STAFF) (Filed on 6/29/2009) (Entered: 06/30/2009)

7/13/2009 171 AMENDED PRELIMINARY INJUNCTION by Judge Claudia Wilken (cwlc3, COURT STAFF) (Filed on 7/13/2009) Modified on 7/14/2009 (cp, COURT STAFF). (Entered: 07/13/2009)

7/13/2009 172 ORDER CLARIFYING INJUNCTION AND DENYING re 144

MOTION FOR CIVIL CONTEMPT SANCTIONS filed by [Lydia Dominguez, et al.] (cwlc3, COURT STAFF) (Filed on 7/13/2009) Modified on 7/14/2009 (cp, COURT STAFF). (Entered: 07/13/2009)

7/23/2009 202 AMENDED NOTICE OF APPEAL as to 171 Order on Motion for Sanctions, 172 Order[,] 130 Preliminary Injunction, 131 Order on Motion for Preliminary Injunction by David Maxwell-Jolly, Arnold Schwarzenegger, John A. Wagner. Appeal Record due by 8/24/2009. (Zwibelman, Michael) (Filed on 7/23/2009) Modified on 7/24/2009 (cp, COURT STAFF). (Entered: 07/23/2009)

7/24/2009 203 ORDER FURTHER CLARIFYING INJUNCTION. Signed by Judge Claudia Wilken on 7/24/09. (scc, COURT STAFF) (Filed on 7/24/2009) (Entered: 07/24/2009)

7/28/2009 205 AMENDED NOTICE OF APPEAL as to 171 Order on Motion for Sanctions, 172 Order[,] 130 Preliminary Injunction, 203 Order, 131 Order on Motion for Preliminary Injunction by David Maxwell-Jolly, Arnold Schwarzenegger, John A. Wagner (SECOND AMENDED NOTICE). Filing fee $455. Appeal Record due by 8/27/2009. (Zwibelman, Michael)

(Filed on 7/28/2009) (Entered: 07/28/2009)

8/13/2009 212 **ANSWER** to Complaint by John Chiang, David Maxwell-Jolly, Arnold Schwarzenegger, John A. Wagner. (Carson, Susan) (Filed on 8/13/2009) Modified on 8/14/2009 (jlm, COURT STAFF). (Entered: 08/13/2009)

3/3/2010 262 OPINION of USCA as to 138 Notice of Appeal filed by David Maxwell-Jolly, John Chiang, Arnold Schwarzenegger, John A. Wagner, 205 Amended Notice of Appeal, filed by David Maxwell-Jolly, Arnold Schwarzenegger, John A. Wagner, 202 Amended Notice of Appeal, filed by David Maxwell-Jolly, Arnold Schwarzenegger, John A. Wagner (cp, COURT STAFF) (Filed on 3/3/2010) (Entered: 03/03/2010)

3/25/2010 267 MANDATE of USCA; cost is awarded to the appellee in the amount of $316.90 as to 138 Notice of Appeal, 205 Amended Notice of Appeal, 202 Amended Notice of Appeal, filed by David Maxwell-Jolly, Arnold Schwarzenegger, John A. Wagner (cp, COURT STAFF) (Filed on 3/25/2010) (Entered: 03/25/2010)

Relevant Docket Entries in the United States Court of Appeals for the Ninth Circuit, *Dominguez v. Schwarzenegger*, No. 09-16359

Date	No.	Docket Text
7/1/2009	7	Filed Appellants Civil Appeals Docketing Statement. Served on 06/29/2009. [6978769] (JFF)
08/07/2009	31	Submitted (ECF) Opening brief for review. Submitted by Appellants John Chiang, David Maxwell-Jolly, Arnold Schwarzenegger and John A. Wagner. Date of service: 08/07/2009. [7020506] (GDB)
8/12/2009	33	Filed clerk order: Opening Brief [31] filed by John Chiang, Arnold Schwarzenegger, David Maxwell-Jolly and John A. Wagner. * * * [7025298] (GLS)
8/20/2009	49	Filed Appellants John Chiang, David Maxwell-Jolly, Arnold Schwarzenegger and John A. Wagner excerpts of record in 4 volumes. [7150142] (PANEL) (FT)
9/4/2009	37	Filed Appellees Mikesha Martinez, Herbert M. Meyer, Service Employees International Union California State Council, Service Employees International Union Local 521, Service Employees International Union United Health Care Workers West, Service Employees International Union United Long-Term Care

		Workers and Willie Beatrice Sheppard supplemental excerpts of record on appeal in 2 volumes. [7053194] (FT)
9/4/2009	38	Submitted (ECF) Answering brief for review. Submitted by Appellees [Lydia Dominguez, et al.]. Date of service: 09/04/2009. [7053252] – [COURT UPDATE: Changed type of brief. 09/08/2009 by ASW] (SL)
9/4/2009	40	Filed Appellees' supplemental excerpts of record on appeal in 2 volumes. [7053660] (LA)
9/8/2009	39	Filed clerk order: Answering Brief filed by Appellees. * * * [7053642] (LA)
9/18/2009	42	Submitted (ECF) Reply brief for review. Submitted by Appellants John Chiang, David Maxwell-Jolly, Arnold Schwarzenegger and John A. Wagner. Date of service: 09/18/2009. [7067399] (SMC)
9/18/2009	43	Filed clerk order: Reply Brief filed by John Chiang, Arnold Schwarzenegger, David Maxwell-Jolly and John A. Wagner. * * * [7067446] (LA)
1/19/2010	57	ARGUED AND SUBMITTED TO STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.. [7199057] (LN)

3/3/2010	60	FILED OPINION (STEPHEN R. REINHARDT, WILLIAM A. FLETCHER and MILAN D. SMITH, JR.) AFFIRMED. Judge: MDS Authoring. FILED AND ENTERED JUDGMENT. [7250565] (RP)
3/24/2010	63	MANDATE ISSUED. (SR, WAF and MDS) Cost awarded to APPELLEE in the amount of $316.90. [7277067] (TB)

Relevant Docket Entries in the United States District Court for the Northern District of California, *Santa Rosa Memorial Hospital v. Maxwell-Jolly*, No. CV 08-5173 SC

Date	No.	Docket Text
11/14/2008	1	COMPLAINT /no process against Sandra Shewry (Filing fee $350, receipt number 34611025556.). Filed by [Santa Rosa Memorial Hospital, et al.]. (ga, COURT STAFF) (Filed on 11/14/2008) (Entered: 11/17/2008)
12/4/2008	7	AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF against Sandra Shewry. Filed by [Santa Rosa Memorial Hospital, et al.]. (Johnson, Dean) (Filed on 12/4/2008) (Entered: 12/04/2008)
1/14/2009	11	MOTION for Preliminary Injunction filed by [Santa Rosa Memorial Hospital, et al.]. Motion Hearing set for 2/20/2009 10:00 AM in Courtroom 1, 17th Floor, San Francisco. (Attachments: * * *) (Johnson, Dean) (Filed on 1/14/2009) (Entered: 01/14/2009)
1/22/2009	13	ANSWER to Amended Complaint by Sandra Shewry. (Zwibelman, Michael) (Filed on 1/22/2009) (Entered: 01/22/2009)
1/30/2009	17	Memorandum in Opposition re 11 MOTION for Preliminary Injunction filed by Sandra Shewry.

		(Attachments: * * *) (Zwibelman, Michael) (Filed on 1/30/2009) (Entered: 01/30/2009)
2/6/2009	21	Reply in Support of 11 Preliminary Injunction filed by [Santa Rosa Memorial Hospital, et al.]. (Attachments: * * *) (Johnson, Dean) (Filed on 2/6/2009) Modified on 2/9/2009 (aaa, Court Staff). (Entered: 02/06/2009)
2/23/2009	30	ORDER by Judge Samuel Conti denying Motion for Preliminary Injunction and Staying Case (sclc2, COURT STAFF) (Filed on 2/23/2009) (Entered: 02/23/2009)
3/3/2009	31	NOTICE OF APPEAL as to 30 Order on Motion for Preliminary Injunction on the Pleadings by Anaheim Memorial Medical Center. Filing fee $455.00., Receipt Number 34611029525 (aaa, Court Staff) (Filed on 3/3/2009) (Additional attachment(s) added on 3/13/2009: # 1 USCA NUMBER: 09-15434) (aaa, Court Staff). (Entered: 03/05/2009)
6/2/2009	45	ORDER of USCA: VACATED AND REMANDED; as to 31 Notice of Appeal, filed by Anaheim Memorial Medical Center (aaa, COURT STAFF) (Filed on 6/2/2009) (Entered: 06/02/2009)

6/4/2009	47	ORDER re Supplemental Briefing (sclc2, COURT STAFF) (Filed on 6/4/2009) (Entered: 06/04/2009)
6/12/2009	48	Supplemental Memorandum to Enjoin AB 5; Exhibits 1-5; in Response to 6/4/2009 Court Order filed by [Santa Rosa Memorial Hospital, et al.]. (Johnson, Dean) (Filed on 6/12/2009) Modified on 6/15/2009 (aaa, COURT STAFF). (Entered: 06/12/2009)
6/17/2009	49	RESPONSE to re 47 Order by Sandra Shewry. (Attachments: * * *) (Zwibelman, Michael) (Filed on 6/17/2009) (Entered: 06/17/2009)
6/19/2009	50	Reply to Opposition filed by [Santa Rosa Memorial Hospital, et al.]. (Sorgen, Michael) (Filed on 6/19/2009) (Entered: 06/19/2009)
6/25/2009	52	MANDATE of USCA: The judgment of this Court, entered 6/1/09, takes effect this date. This constitutes the formal mandate of this Court; as to 31 Notice of Appeal, filed by Anaheim Memorial Medical Center (aaa, COURT STAFF) (Filed on 6/25/2009) (Entered: 06/25/2009)
6/26/2009	54	ORDER (sclc2, COURT STAFF) (Filed on 6/26/2009) (Entered: 06/26/2009)
9/9/2009	59	ORDER LIFTING STAY; SETTING NEW BRIEFING SCHEDULE.

		Signed by Judge Samuel Conti on 9/9/2009. (sclc2, COURT STAFF) (Filed on 9/9/2009) (Entered: 09/09/2009)
10/12/2009	60	Amended MOTION for Preliminary Injunction; Notice of Motion; Memorandum of Points and Authorities filed by [Santa Rosa Memorial Hospital, et al.]. Motion Hearing set for 11/20/2009 10:00 AM in Courtroom 1, 17th Floor, San Francisco. (Attachments: * * *) (Johnson, Dean) (Filed on 10/12/2009) (Entered: 10/12/2009)
10/30/2009	61	Memorandum in Opposition re 60 Amended MOTION for Preliminary Injunction; Notice of Motion; Memorandum of Points and Authorities filed by Sandra Shewry. (Attachments: * * *) (Zwibelman, Michael) (Filed on 10/30/2009) (Entered: 10/30/2009)
11/6/2009	64	Reply to Opposition re 60 Amended MOTION for Preliminary Injunction; Notice of Motion; Memorandum of Points and Authorities filed by [Santa Rosa Memorial Hospital, et al.]. (Attachments: * * *) (Johnson, Dean) (Filed on 11/6/2009) (Entered: 11/06/2009)
11/12/2009	65	MOTION for Leave to File Surreply in Further Opposition to Amended Preliminary Injunction Motion filed by Sandra Shewry. (Attachments:

* * *) (Zwibelman, Michael) (Filed on 11/12/2009) (Entered: 11/12/2009)

11/16/2009 66 Reply Memorandum re 65 MOTION for Leave to File Surreply in Further Opposition to Amended Preliminary Injunction Motion filed by [Santa Rosa Memorial Hospital, et al.]. (Attachments: * * *) (Johnson, Dean) (Filed on 11/16/2009) (Entered: 11/16/2009)

11/16/2009 67 ORDER by Judge Samuel Conti granting 65 Motion for Leave to File Surreply in Further Opposition to Amended Preliminary Injunction Motion (tdm, COURT STAFF) (Filed on 11/16/2009) (Entered: 11/16/2009)

11/18/2009 68 ORDER by Judge Samuel Conti granting 60 Motion for Preliminary Injunction (sclc2, COURT STAFF) (Filed on 11/18/2009) (Entered: 11/18/2009)

11/19/2009 71 ORDER STAYING PRELIMINARY INJUNCTION AND CASE. Signed by Judge Samuel Conti on 11/19/2009. (sclc2, COURT STAFF) (Filed on 11/19/2009) (Entered: 11/19/2009)

11/19/2009 72 NOTICE OF APPEAL as to 68 Order on Motion for Preliminary Injunction by Sandra Shewry. Filing fee $455.00. Receipt Number 34611039124 (aaa, COURT STAFF) (Filed on 11/19/2009) (Additional attachment(s) added on

11/30/2009: # 1 USCA NUMBER: 09-17633) (aaa, COURT STAFF). (Entered: 11/20/2009)

12/2/2009 80 ORDER by Judge Samuel Conti granting 77 Ex Parte Application to Vacate Stay of Preliminary Injunction and Restoring Preliminary Injunction (sclc2, COURT STAFF) (Filed on 12/2/2009) (Entered: 12/02/2009)

12/10/2009 83 ORDER by Judge Samuel Conti denying 81 Motion for Order to Show Cause; Clarifying Preliminary Injunction (sclc2, COURT STAFF) (Filed on 12/10/2009) (Entered: 12/10/2009)

12/16/2009 89 AMENDED NOTICE OF APPEAL as to 68 Order on Motion for Preliminary Injunction, 88 Order, 80 Order on Ex Parte Application, 83 Order on Motion for Order to Show Cause by Sandra Shewry. Filing fee $455. (Zwibelman, Michael) (Filed on 12/16/2009) (Additional attachment(s) added on 9/8/2010: # 1 Petition for Writ of Certi[o]rari: Case Number 10-283) (aaa, COURT STAFF). (Entered: 12/16/2009)

6/4/2010 92 USCA Memorandum: AFFIRMED; as to 89 Amended Notice of Appeal, filed by Sandra Shewry, 72 Notice of Appeal, filed by Sandra Shewry (aaa, COURT STAFF) (Filed on 6/4/2010) (Entered: 06/04/2010)

6/30/2010	93	MANDATE of USCA: The judgment of this Court, entered May 27, 2010, takes effect this date. This constitutes the formal mandate of this Court. FOR THE COURT; as to 89 Amended Notice of Appeal, filed by Sandra Shewry, 72 Notice of Appeal, filed by Sandra Shewry (aaa, COURT STAFF) (Filed on 6/30/2010) (Entered: 06/30/2010)

Relevant Docket Entries in the United States Court of Appeals for the Ninth Circuit, *Santa Rosa Memorial Hospital v. Maxwell-Jolly*, No. 09-17633

11/24/2009	5	Filed Appellant Sandra Shewry Civil Appeals Docketing Statement. Served on 11/19/2009. [7143452] (CW)
12/17/2009	6	Submitted (ECF) Opening brief for review. Submitted by Appellant David Maxwell-Jolly. Date of service: 12/17/2009. [7167504] (MAZ)
12/17/2009	10	Filed Appellant David Maxwell-Jolly excerpts of record in 7 volumes. With Volume 1-A. Served on 12/17/2009. [7168545] (WP)
12/18/2009	9	Filed clerk order: The opening brief [6] submitted by David Maxwell-Jolly is filed. * * * [7168541] (WP)
1/10/2010	13	Submitted (ECF) Answering brief for review. Submitted by Appellees [Santa Rosa Memorial Hospital, et al.]. Date of service: 01/10/2010. [7188837] (DLJ)
1/12/2010	14	Filed clerk order: The answering brief [13] submitted by [Santa Rosa Memorial Hospital, et al.] is filed. * * * [7192521] (PK)
1/25/2010	16	Submitted (ECF) Reply brief for review. Submitted by Appellant David Maxwell-Jolly. Date of service: 01/25/2010. [7207411] (MAZ)

1/27/2010	17	Filed clerk order: The reply brief [16] submitted by David Maxwell-Jolly is filed. * * * [7210407] (PK)
5/12/2010	22	ARGUED AND SUBMITTED TO PROCTER R. HUG, PAMELA ANN RYMER and M. MARGARET MCKEOWN. [7334798] (AN)
5/27/2010	23	FILED MEMORANDUM DISPOSITION (PROCTER R. HUG, PAMELA ANN RYMER and M. MARGARET MCKEOWN) AFFIRMED. FILED AND ENTERED JUDGMENT. [7351898] (DD)
6/18/2010	25	MANDATE ISSUED. (PRH, PAR and MMM) [7377208] (SW)

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, a nonprofit corporation; GRAY PANTHERS OF SACRAMENTO, a nonprofit corporation; GRAY PANTHERS OF SAN FRANCISCO, a nonprofit corporation;	Case No. **CV08-03315** (Los Angeles Superior Court Case No. BS114459) **RESPONDENTS' NOTICE OF REMOVAL OF ACTION UNDER**

GERALD SHAPIRO, Pharm.D. doing business as Uptown Pharmacy and Gift Shoppe; SHARON STEEN, doing business as Central Pharmacy; MARK BECKWITH; and MARGARET DOWLING, TRAN PHARMACY, INC., AND JASON YOUNG, Petitioners, v. **SANDRA SHEWRY, Director of the Department of Health Care Services, State of California; CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES,** Respondents.	**42 U.S.C. § 1441(b)** (Filed May 19, 2008)

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Respondents Sandra Shewry, Director of the California Department of Health Care Services, and the California Department of Health Care Services, hereby remove to this Court the state court action described below:

1. On April 22, 2008, Petitioners filed a Verified Petition for Writ of Mandamus in the Superior Court of California, in and for the County of Los Angeles,

entitled "Independent Living Center of Southern California, a nonprofit corporation; Gray Panthers of Sacramento, a nonprofit corporation; Gray Panthers of San Francisco, a nonprofit corporation; Gerald Shapiro, Pharm.D. doing business as Uptown Pharmacy and Gift Shoppe; Sharon Steen, doing business as Central Pharmacy; Mark Beckwith; and Margaret Dowling, Petitioners, vs. Sandra Shewry, Director of the Department of Health Care Services, State of California; California Department of Health Care Services, Respondents" as case number BS114459.

2. In their Verified Petition for Writ of Mandamus, Petitioners, who are health care advocates and Medi-Cal providers and recipients, seek to enjoin Respondents from implementing a 10% reduction in Medi-Cal payments to Medi-Cal providers. Petitioners allege that the proposed reduction, which is planned to go into effect on July 1, 2008, violates the Medicaid Act, namely 42 U.S.C. § 1396a subd. (a)(30)(a), the Americans with Disabilities Act of 1990, and the Social Security Act, among other things.

3. Respondents Sandra Shewry, Director of the California Department of Health Care Services, and the California Department of Health Care Services were served with copies of the Verified Petition for Writ of Mandamus on April 22, 2008.

4. On May 12, 2008, Petitioners filed a Verified First Amended Petition for Writ of Mandamus and a Memorandum in Support of Writ of Mandamus, or in the Alternative, For Permanent or Preliminary

Injunction. The Amended Petition added Petitioners Tran Pharmacy, Inc. and Jason Young. Respondents were served on May 12, 2008 with the Verified First Amended Petition for Writ of Mandamus and the Memorandum in Support of Writ of Mandamus, or in the Alternative, For Permanent or Preliminary Injunction. Petitioners again allege that Respondents violated the Medicaid Act, namely 42 U.S.C. § 1396a subd. (a)(30)(a), the Americans with Disabilities Act of 1990, and the Social Security Act, among other things.

5. On or around May 15, 2008, Petitioners filed an Ex Parte Application for Alternative Writ of Mandamus under California Code of Civil Procedure section 1085 to immediately enjoin Respondents from implementing the 10% reduction in Medi-Cal payments to Medi-Cal providers. The hearing on this application is set for May 20, 2008 at 8:30 a.m. at the Los Angeles Superior Court before the Honorable James C. Chalfant in Department 85.

6. Under 28 U.S.C. § 1331, this civil action is within the original jurisdiction of this Court. Respondents may remove this case to this Court under 28 U.S.C. § 1441(b) because Plaintiff alleges that Respondents violated federal laws, namely the Medicaid Act, the Americans with Disabilities Act, and the Social Security Act.

7. Under 28 U.S.C. § 1446(a), attached are true and correct copies of the state-court file in this case, as served on Respondents:

a. **Exhibit A: Verified Petition for Writ of Mandamus.**

b. **Exhibit B: Civil Case Cover Sheet.**

c. **Exhibit C: Civil Case Cover Sheet Addendum and Statement of Location.**

d. **Exhibit D: Verified First Amended Petition for Writ of Mandamus.**

e. **Exhibit E: Petitioners' Memorandum in Support of Writ of Mandamus, or in the Alternative, For Permanent or Preliminary Injunction.**

f. **Exhibit F: Petitioners' Notice of Ex Parte Application and Ex Parte Application for Alternative Writ of Mandamus Under § 1085 Cal. Code of Civil Procedure with supporting documentation**

Dated: May 19, 2008

Respectfully submitted,

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* * *

EXHIBIT - D

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SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF LOS ANGELES, UNLIMITED JURISDICTION

INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, a nonprofit corporation; GRAY PANTHERS OF SACRAMENTO, a nonprofit corporation; THE GRAY PANTHERS OF SAN FRANCISCO, a nonprofit corporation; GERALD SHAPIRO, Pharm.D., doing business as Uptown Pharmacy and Gift Shoppe; SHARON STEEN, doing business as Central Pharmacy; MARK BECKWITH; MARGARET DOWLING; TRAN PHARMACY, INC., a corporation, doing business as Tran Pharmacy; and JASON YOUNG,

-vs.-

SANDRA SHEWRY, Director of Department of Health Care Services of the State of California; DEPARTMENT OF HEALTH CARE SERVICES, a department of the State of California; and DOES 1 through 50,.

Respondents. /

No. BS 114459

VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDAMUS

VERIFIED FIRST AMENDED PETITION FOR WRIT OF MANDAMUS
(§ 1085 Code of Civil Procedure)

TO THE ABOVE-ENTITLED HONORABLE COURT:

The verified first amended petition for writ of mandamus, under § 1085 Code of Civil Procedure, of petitioners Independent Living Center of Southern California, Inc.; Gray Panthers of Sacramento; The Gray Panthers of San Francisco; Gerald Shapiro, Pham.D., [sic] dba Uptown Pharmacy & Gift Shoppe; Sharon Steen, dba Central Pharmacy; Mark Beckwith; Margaret Dowling; Tran Pharmacy, Inc., dba Tran Pharmacy; and Jason Young, respectfully shows:

Jurisdiction and Venue[1]

1. The above-entitled Superior Court has jurisdiction under Article VI, section 10, California Constitution, and § 1085 Code of Civil Procedure ("Code Civ. Proc."). Venue lies under § 401 Code Civ. Proc. which provides that an action may be filed against an officer or agency of the State of California in any county in which the California Attorney General has an office; and under § 393(b) Code Civ. Proc., which provides that an action may be filed in a county in which a public officer has an office.

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[1] Headings and captions are not allegations, and need not be traversed or denied; but, are set forth only to assist the reader.

Parties

2. (a) The petitioner INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, INC. ("ILCSCal") is a nonprofit California corporation which was duly organized and incorporated in California on July 25, 1977 pursuant to the General Nonprofit Corporation Law of the State of California.

(b) ILCSCal has its principal office and place of business in, and does business in the County of Los Angeles, California.

3. The petitioner GRAY PANTHERS OF SACRAMENTO ("Gray Panthers Sacto") is a California nonprofit public benefit corporation, whose principal office and place of business is, and does business, in the County of Sacramento, California.

4. (a) The petitioner THE GRAY PANTHERS OF SAN FRANCISCO ("Gray Panthers SF") is a nonprofit California corporation which was duly organized and incorporated in California on August 28, 1978, pursuant to the General Nonprofit Corporation Law of the State of California.

(b) GRAY PANTHERS SF has its principal office and place of business in, and does business, in the City and County of San Francisco, California.

5. (a) The petitioner GERALD SHAPIRO, Pharm.D., is a duly licensed registered pharmacist with License No. 24377, who owns and operates a duly licensed retail pharmacy under the fictitious name of Uptown Pharmacy & Gift Shoppe, under

retail pharmacy license No. PHY 41615, in the City of Los Angeles, California.

(b) The petitioner SHAPIRO's pharmacy participates in the Medi-Cal fee-for-service program and also in Medi-Cal managed care plans, under Medi-Cal provider identification No. PHA 416150.

6. (a) The petitioner SHARON STEEN is an individual who is a copartner in a copartnership which owns and operates a licensed retail pharmacy, under the fictitious name Central Pharmacy, under retail pharmacy license No. PHY 38051, in the City of Santa Monica, California.

(b) The petitioner STEEN's pharmacy participates in the Medi-Cal fee-for-service program and also in Medi-Cal managed care plans, under Medi-Cal provider identification No. PHA 380510.

7. The petitioners MARK BECKWITH, MARGARET DOWLING, and JASON YOUNG are individuals who are recipients in the state-federal Medicaid program in California (which is called "Medi-Cal").

8. (a) The Petitioner TRAN PHARMACY, INC. is California corporation which owns and operates a duly licensed retail pharmacy under the fictitious name of Tran Pharmacy, under retail pharmacy license No. PHY 43647, in Garden Grove, California.

(b) The TRAN PHARMACY, INC.'s pharmacy participates in the Medi-Cal fee-for-service program and also in Medi-Cal managed care plans,

under Medi-Cal provider identification No. PHA 436470.

9. (a) The respondent DEPARTMENT OF HEALTH CARE SERVICES ("Department") is a department of the State of California. The Department administers the Medi-Cal program under § 14000 et seq. California Welfare and Institutions ("Welf. & Inst.") Code. The Department has an office in the County of Los Angeles, California.

(b) The respondent SANDRA SHEWRY ("Director"), is the director of the Department. The Director is exclusively empowered by § 14100.1 and 14105 Welf. & Inst. Code to set all policies, rules and regulations in the Medi-Cal program, including all rates payable to Medi-Cal providers. The Director has an office in the County of Los Angeles. The Director SANDRA SHEWRY is sued in her official capacity, only.

(c) Respondents DOES 1 through 50 are persons and officers whose identity is unknown to petitioners, and who are agents, officers, and servants of the State of California, and who have some function, unknown to petitioners at this time, to assist or to carry out the actions of the respondents complained of in this Petition. Petitioners pray leave of the Court to amend this Petition as and when the identity and functions of DOES 1 through 50 become known to the petitioners.

STANDING

Purposes of the Gray Panther petitioners

10. The membership of each of the Gray Panthers Sacto and of the Gray Panthers SF, respectively, is predominantly over the age of 50. A primary function and purpose of the Gray Panthers Sacto, and of the Gray Panthers SF, respectively, is to advocate and advance the health care and the health care rights and civil rights of their members, (1) a number of whom are Medi-Cal recipients in the Medi-Cal fee-for-services program, (2) a number of whom are Medi-Cal recipients in Medi-Cal managed care plans.

Suit as authorized by Green v. Obledo and the common law

11. (a) The petitioners MARK BECKWITH, MARGARET DOWLING, GERALD SHAPIRO, Pharm.D, SHARON STEEN, and JASON YOUNG are each citizens and residents of the State of California. The ILCSCal, the Gray Panthers Sacto, the Gray Panthers SF, and the Tran Pharmacy, Inc., dba Tran Pharmacy, are also each a corporate citizen and resident of the State of California.

(b) Each of the petitioners, mentioned the preceding sub-Paragraph (a) of Paragraph 11, sue on their own behalf In their own interest, respectively, as well as, also, on behalf of the public of the State of California, to procure the performance by the respondent public officials of public duty, as authorized by *Green v. Obledo,* 29 Cal.3d 126 (1981); namely, the

performance of the mandatory ministerial duty (1) to set aside their policy to implement Sections 14 and 15 of Assembly Bill X3 5 (enacted and eff. Feb. 16, 2008, at Chapter 3, Statutes 2007-2008 Third Extraordinary Session), and (2) to refrain from implementing Sections 14 and 15 of Assembly Bill X3 5, including refraining from reducing payments 10% to Medi-Cal doctors, dentists, pharmacies, those acute care hospitals who have no contract with the Department, and, other providers in the Medi-Cal fee-for-service program, and Medi-Cal managed care plans, commencing July 1, 2008; – which aforesaid actions of the respondents are preempted, under the Supremacy Clause, (article VI, U.S. Constitution), in that the aforesaid actions:

> – (1) violate 42 U.S.C. § 1396a(a)(30)(A), (herein, "Sec. 30(A)," including the quality and access clauses of Sec. 30(A).
>
> – (2) violate the federal Americans with Disabilities Act of 1990, ("ADA");

which suit is permitted and authorized by all laws made and provided therefor, the common law, and by *Green v. Obledo* (1981) 29 Cal.3d 126.

Prudential *jus tertii* suits

12. (a) Each of the pharmacy petitioners, (namely, the Uptown Pharmacy, Central Pharmacy, and Tran Pharmacy, (and their owners who are the plaintiffs Gerald Shapiro, Pharm.D., Sharon Steen, and the Tran Pharmacy, Inc.), also sue in a prudential

jus tertii capacity to assert, respectively, the interests of their respective Medi-Cal beneficiary patients, as well as the interests of their patients with disabilities, in the causes of action, claims, Supremacy Clause preemption, and relief which is sued upon and sought in the within case.

(b) The petitioner ILCSCal also sues in a prudential *jus tertii* capacity, in its capacity as an independent living center, – designated and organized as such, and with purposes and powers therefore, under and as authorized by the state Rehabilitation Act, § 19800 et seq. Welf. & Inst. Code, – to assert the interests of its clients who are Medi-Cal beneficiary patients, as well as the interests of its clients with disabilities, in the causes of action, claims, Supremacy Clause preemption, and relief which is sued upon and sought in the within case.

(c) The petitioners Gray Panthers Sacto and Gray Panthers SF also sue in a prudential *jus tertii* capacity, respectively, to assert the interests of their respective members who are Medi-Cal beneficiary patients, as well as the interests of their members clients with disabilities, in the causes of action, claims, Supremacy Clause preemption, and relief which is sued upon and sought in the within case.

13. Each of the respondents Gerald Shapiro and Sharon Steen, and the Tran Pharmacy, Inc., a resident California corporation, also sue on all Causes of Action herein in their capacity as citizen resident taxpayers of the State of California, under the

common law and under § 526a, Code Civ. Proc., – in that each is a taxpayer who has been assessed and paid a state income tax, within 12 months on the filing of this *Verified First Amended Petition for Writ of Mandamus,* to the State of California.

14. Each of the petitioners, – as well as each of the patients, clients, and members in respect to whom the pharmacy plaintiffs, the ILCSCal, and the Gray Panthers petitioners are prudential *jus tertii* representatives, – also has standing inasmuch as each has suffered, will suffer, and is threatened to be caused to suffer, concrete and irreparable injury as shall hereinafter be specified, unless respondents are restrained by a writ of mandamus from implementing the statutes which are preempted, under the Supremacy Clause, by Sec. 30(A), and by the ADA, as set forth hereinafter.

FACTS COMMON TO ALL CLAIMS

15. The petitioner MARK BECKWITH was born on October 5, 1957, in Corry, Pennsylvania. He is a citizen and resident of the State of California who resides at [Home Address Omitted]. He is a paraplegic on account of spinal muscular atrophy, who requires oxygen at all times, who receives medical and pharmacy services under the Medi-Cal program. He is a SSI recipient who receives $870 monthly from SSI. His Medi-Cal identification number is [REDACTED]

16. The petitioner MARGARET DOWLING was born in Sandusky, Ohio, on July 29, 1940. She is a citizen and resident of the State of California who resides at [Home Address Omitted]. She is a paraplegic who receives part of her medical services under the Medi-Cal program. Her Medi-Cal identification number is [REDACTED].

17. The petitioner JASON YOUNG was born in Inglewood, California on July 15, 1962. He is a citizen and resident of the State of California who resides at [Home Address Omitted]. He suffers disabilities of blindness and brain damage and is a Supplemental Security Income (SSI) recipient, with SSI identification number of [Social Security Number Omitted]. He receives assistive services from In-Home Supportive Services and medical and other health services from the Medi-Cal managed care program. His Medi-Cal identification number is [REDACTED]

18. – (a) The ILCSCal is a non-profit corporation located in Van Nuys, Santa Clarita and Lancaster, California. The amended articles of incorporation of ILCSCal state that its primary purposes are to:

> " . . . initiate, sponsor, promote, and carry out plans, policies, and activities that will further the prosperity of and enhance the development of persons with disabilities."

The ILCSCal is a designated center for independent living (CIL). CILs are community-based organizations established under the California Rehabilitation Act (§ 19800 Welf. & Inst. Code) to advocate for and

provide services to enable people with disabilities to achieve independence, including equal access to society and to all activities of society.

– (b) The ILCSCal works on issues of benefits counseling, cross-disability peer modeling/ peer counseling, housing referrals, personal assistants referrals, advocacy, and providing technical assistance, information and referral and emergency services, and assistance in locating medical, pharmacy, and other providers to treat, cure, and alleviate their illness, injury, or condition.

19. The ILCSCal serves over 8,000 individuals with disabilities annually, the majority of whom, (96% or more than 7,500), are categorically linked to Medi-Cal as their primary insurance type, because they are SSI beneficiaries under the Social Security Act; and as such, are not mandated into Medi-Cal managed care, so that most of the clients of ILCSCal who receive SSI are not enrolled in Medi-Cal managed care, and instead receive their Medi-Cal services, including physician, dental, and pharmacy services, from fee-for-service Medi-Cal providers.

– (c) Out of these 7,500 clients with disabilities served annually by ILCSCal, approximately 15%, or 1,200, are eligible for both Medi-Cal and Medicare Part B, and as such:

– (1) receive their physician under Medicare, (*except* for such physician services which are not covered by Medicare, *in which case Medi-Cal pays for the physician service*), and, also receive their

pharmacy services under Medicare Part D, (except for certain "carve out" drug products which are excluded from Medicare Part D and are instead dispensed under the Medi-Cal program); and,

– (2) receive their dental care under Medi-Cal fee-for-service.

LEGISLATIVE HISTORY OF ASSEMBLY BILL X3 5

20. On January 10, 2008, the California Governor proclaimed a State fiscal emergency, sent a proposed 2008-2009 budget bill to the Legislature, and called the Legislature into special session.

21. (a) On February 16, 2008 the Governor signed into law the Special Session Budget Bill, (Assembly Bill X3), and, also, Assembly Bill X3 5 (the Special Session health care trailer bill), and Assembly Bill X3 6 (the Special Session human services trailer bill).

(b) Assembly Bill X3 5, eff. February 16, 2008, was chaptered as Chapter 3, Statutes 2007-2008 Third Extraordinary Session.

Assembly Bill X3 5

22. Section 14 of Assembly Bill X3 5 added §14105.19 Welf. & Inst. Code, which:

– in subds. (a), (b)(1), (b)(2), and (c) – (e) provides that reimbursement shall be cut 10% across-the-board

in Medi-Cal fee-for-service to physicians, dentists, pharmacies, skilled nursing facilities, acute care hospitals (in respect to inpatient hospital services) who have no contract with the Department, and other providers in the Medi-Cal fee-for-service program, for services for dates of service on and after July 1, 2008; and,

– in subd. (b)(3) provides that payments shall be reduced by the actuarial equivalent amount specified in subd. (b) of § 14105.9 Welf. & Inst. Code, (i.e., an amount of 10%), to Medi-Cal managed care plans, which reduction is to be effected pursuant to contract amendments or change orders effective on July 1, 2008.

23. Section 15 of Assembly Bill X3 5 added §14105.245 Welf. & Inst. Code, which provides that amounts paid interim payments to acute care hospitals not under contract with the Department, for amounts paid as interim payments for inpatient hospital services covered by Medi-Cal, shall also be cut 10% across-the-board in Medi-Cal fee-for-service for acute care hospitals who have no contract with the Department for fiscal year 2008-09, (commencing July 1, 2008).

24. § 14105.245 Welf. & Inst. Code, (added by Section 15 of Assembly Bill X3 5 as set forth above), provides:

> "(a) The Legislature finds and declares that the state *faces a fiscal crisis that requires unprecedented measures to be taken to reduce*

General Fund expenditures to avoid reducing vital government services necessary for the protection of the health, safety, and welfare of the citizens of the State of California." (Emphasis supplied.)

25. Finally, Secs. 16 and 17 of Assembly Bill X3 5 provide:

"SEC. 16. This act *addresses the fiscal emergency declared by the Governor* by proclamation on January 10, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 17.... In order to make statutory changes *needed to implement cost containment measures affecting health services at the earliest possible time*, it is necessary that this act take effect immediately." (Emphasis supplied.)

Concrete injury from implementing Secs. 14 and 15 of Assembly Bill X3 5.

26. Each of the Petitioners, as well as:

– all Medi-Cal recipients who receive provider services in the Medi-Cal fee-for-service program,

– all Medi-Cal recipients enrolled in Medi-Cal managed care plans,

– all Medi-Cal providers in the Medi-Cal fee-for-service program who are subject to the aforesaid 10% cut in Medi-Cal payments,

– all Medi-Cal managed care plans, and,

– all Medi-Cal providers in respect to or with whom Medi-Cal managed care plans have contracted with or arranged for covered Medi-Cal managed care services to be furnished by them, (in respect to whom the managed care plans will foreseeably and inevitably pass through the aforesaid 10% cut commencing July 1, 2008),

will, respectively, and foreseeably and inevitably, suffer concrete injury, and are threatened with concrete injury, and are put at risk of concrete injury, by the aforesaid 10% cut, or the actuarial equivalent thereof, which will be put into effect commencing July 1, 2008 by the respondents, pursuant to their policy to implement the aforesaid Sections 14, and 15 of Assembly Bill X3 5, including, without limitation thereby, (1) the 10% across-the-board reduction in reimbursement to physicians, dentists, pharmacies, acute-care hospitals who have no contract with the Department, and other providers in the Medi-Cal fee-for-service program; and (2) the equivalent actuarial 10% reduction in payments to Medi-Cal managed care plans, commencing July 1, 2008; (hereinafter referred to, collectively, as "the Medi-Cal cuts"); which concrete injury from the Medi-Cal cuts is great, immediate, and irreparable.

Denial of access to physicians, and denial of quality medical services

27. More particularly, it is a fact that Medi-Cal rates for physicians are 61% or less of what Medicare pays for the same physician services; that a 10% cut will reduce reimbursement to Medi-Cal physicians to only 57% of what Medicare would pay; and that as a result of the low Medi-Cal rates, only 55% of primary care physicians and less than 50% or [sic] specialists are willing to participate in the Medi-Cal program, (either in the Medi-Cal fee-for-service program, or in Medi-Cal managed care programs). (1) These facts are verified and reported by the Legislative Analyst in *Analysis of the 2008-2009 Budget Bill,* (Budget Analysis"), citing studies on the subject, at pages C-37 and C-38 of the Budget Analysis; and (2) studies funded by the California Healthcare Foundation, (a respected organization with whom the Department often contracts to provide studies and information to the Department), consistently so report.

28. Further:

– **First.** It is a fact that persons with disabilities such as the petitioners DOWLING, BECKWITH, and YOUNG, and the thousands of disabled clients of the petitioner ILCSCal, and the thousands of home shut-ins to whom petitioner SHAPIRO and STEEN deliver prescriptions in the Medi-Cal fee-for-service program, have more difficulty in locating primary care and specialists who are needed by them to adequately follow and care for their complex medical needs, and

keep them alive, than do Medi-Cal recipients without disabilities.

– **Second.** It is a fact that although Medi-Cal managed care plans do assign a Medi-Cal enrollee to a primary care physician, nevertheless, persons with severe disabilities such as the petitioners DOWLING, BECKWITH, and YOUNG require more complex care, from specialists, than Medi-Cal managed care plans are able to furnish them, due to a shortage of specialists in both Medi-Cal fee-for-service and Medi-Cal managed care.

– **But,** specialists who have the capability to treat and follow the complex needs of disabled persons, – such as the paraplegic DOWLING, the quadriplegic BECKWITH, and the blind and brain damaged YOUNG, – are difficult to find and retain over any period of time, **whether the specialist is being sought** by disabled Medi-Cal recipients in the Medi-Cal fee-for-service program, or by disabled Medi-Cal recipients in Medi-Cal managed care plans.

– This above situation, set forth in this Paragraph, is due to the fact that payment of specialists is so low that **less than 50% of specialists** have Medi-Cal patients; and, those that do, repeatedly state in surveys that they are **not willing to accept new** Medi-Cal patients, (whether they come from the Medi-Cal fee-for-service program or from Medi-Cal managed care plans).

– However, given the facts which are set forth above in this Paragraph, it is inevitable that, if the

Medi-Cal cuts of Sections 14 and 15 of Assembly Bill X3 5 are implemented for dates of service on and after July 1, 2008, that thousands of Medi-Cal recipients in both Medi-Cal fee-for-service and Medi-Cal managed care, – including (1) the petitioners DOWLING, BECKWITH, and YOUNG; (2) the thousands of disabled patients of the petitioner pharmacies (Uptown, Central, and Tran), in Los Angeles and Orange counties, (3) the thousands of disabled clients of the petitioner ILCSCal, and (4) the members of the Sacto Gray Panthers and the SF Gray Panthers who are Medi-Cal recipients, **will be driven,** and will at the least be put at great risk, of being forced into institutions in order to survive, if at all.

Denial of access to dentists, and to quality dental care

29. It is also a fact, which is reflected in court decisions and studies, that because of too-low rates, approximately 90% of dentists refuse to accept Medi-Cal patients. Accordingly, the 10% reduction in Medi-Cal payments to dentists, will simply intensify the denial of access and quality dentistry, which already presently exists.

Denial of access to pharmacy care

30. California pharmacies, both chain pharmacies and independent pharmacies, uniformly earn less than a 10% net profit.

31. Further, it is fact, – as demonstrated by the 2006 survey by Myers & Stauffer of California pharmacy costs to operate, and their costs to acquire prescription drug products, that approximately 27.5% of a typical pharmacy's prescriptions in the Medi-Cal program are single source (brand) drugs; that approximately 36% of the prescriptions are multi-source (generic) drugs; and that approximately 36.2% of the prescriptions are low-priced drugs in respect to which the federal government has set a federal upper limit ("FUL") or Medi-Cal has set a maximum allowable ingredient cost ("MAIC") limit for reimbursing the pharmacy's cost to acquire such FUL or MAIC.

32. However, the figures set forth in this Myers & Stauffer report to the Department are consistent with the fact, – when the 10% payment cut commences July 1, 2008, – that although California pharmacies including the petitioner pharmacies. would still have a **small net profit** on the 36% of their Medi-Cal prescriptions which are multi-source (generic) prescriptions without a Ful [sic] or MAIC cap, nevertheless, they would have a **larger net loss, collectively,** on the 27.5% of their Medi-Cal prescriptions which are single source (brand) and the 36.2% of their Medi-Cal prescriptions which are subject to a FUL or a MAIC cap; so that on the whole that California pharmacies, including the petitioner pharmacies, will not be able to dispense Medi-Cal prescriptions in the Medi-Cal fee-for-service program except at a net loss on the entire bulk of their Medi-Cal prescription business, (brand, generic, and capped prescriptions).

33. Further, Medi-Cal managed care programs, (such as the Medi-Cal county organized health system managed care program in Orange County which is known as "CalOptima"), typically, (including CalOptima) pass through all reductions in payments by Medi-Cal to Medi-Cal managed care plans; so that (1) pharmacies in Medi-Cal managed care plans, including the petitioner pharmacies, and their patients, will suffer the same reduction in ability to furnish or receive quality pharmacy care, and (2) specialists will become even more scare in managed care plans, so that the frail, elderly, disabled Medi-Cal patients in both the Medi-Cal fee-for-service program, and in Medi-Cal managed care plans, will suffer inability, and be put at risk of inability to obtain specialists, and to obtain quality pharmacy services, if the July 1, 2008 10% cut in payment to Medi-Cal managed care plans is not enjoined by the Court.

34. Accordingly, it is manifest, foreseeable and probable, from the foregoing facts set forth above in this Petition, that the 10% reduction in total reimbursement to pharmacies in the Medi-Cal fee-for-service program, (as well as an actuarially equivalent 10% reduction to Medi-Cal managed care plans), will result in not only many, but most independent pharmacies, such as the petitioners GERALD SHAPIRO, Pharm.D., (owner of Uptown Pharmacy in Los Angeles), and SHARON STEEN, (owner of the independent Central Pharmacy in Santa Monica), and the TRAN PHARMACY, either (1) going out of business, or (2) refusing to accept Medi-Cal any longer, or (3) refusing

to fill those particular Medi-Cal prescriptions in respect to which they suffer a net loss in the acquisition and costs to dispense, or (4) reducing staff, hours of pharmacy operation, and eliminating or reducing delivery services to shut-ins, under the new 10% Medi-Cal payment reduction.

35. Further, many independent pharmacies, but few chain pharmacies, deliver Medi-Cal prescriptions to the aged, frail, and disabled Medi-Cal recipients who are shut-in to their homes.

36. For example, 98% of the prescriptions dispensed by the independent Uptown Pharmacy in Los Angeles, – owned by the petitioner GERALD SHAPIRO, Pharm.D., – are deliveries to approximately 5,000 home shut-ins.

37. More particularly, approximately 55% of the shut-ins to whom Uptown Pharmacy delivers prescriptions receive their medications under Medicare Part D, (i.e., those who are 65 or older, or are Social Security Disability Income beneficiaries). But, also, approximately 30% of the shut-in clientele of Uptown Pharmacy are on the Medi-Cal fee-for-service program, due to the fact they are under 65 or, although disabled, have not qualified for S.S.D.I.

38. However, Uptown's net profit on its entire pharmacy business is less than 10% net profit. Accordingly, the petitioner SHAPIRO, – and two other delivery pharmacies whose owners he knows in Los Angeles, – have no realistic choice but to close their pharmacies if the 10% cut in pharmacy reimbursement

is implemented in July 2008; or at the best, eliminate or reduce deliveries. Thus, if the 10% cut is not restrained by the Court, **thousands of disabled home shut-ins** in Los Angeles, (and similar in other parts of the state), who are Medi-Cal recipients, will no longer have **any access** to life-necessary drugs, and, many of them will suffer and die therefrom.

Summary of overall effect of the 10% Medi-Cal cut

39. Accordingly, due to the too-low rates already paid physicians, dentists, pharmacies, and other providers by Medi-Cal, (1) the further 10% payments reduction if implemented in July 2008, to physicians, will drive and tend to drive even more primary care physicians and specialists, and dentists, pharmacies, and other providers out of the Medi-Cal program, or cause them to terminate present provider-patient relationships, or reduce services, or refuse to [sic] new Medi-Cal patients, or increase appointment wait periods; such that (2) many Medi-Cal recipients, both in the Medi-Cal fee-for-service program and in the Medi-Cal managed care program, – and, especially the tens of thousands who are home-bound shut-ins who depend upon medicine delivery, and also those who are disabled, – will be denied access to life-sustaining medical, dental, and prescription services, with (3) the consequence that Medi-Cal recipients in general will be denied quality medical services and access to quality medical services. More particularly, due to the 10% provider payment cuts (including the

actuarial equivalent thereof to Medi-Cal managed care plans, many **disabled Medi-Cal recipients** such as the petitioners DOWLING, BECKWITH, and YOUNG, and the thousands of clients of independent living centers such as the petitioner ILCSCal, will lose, or are threatened with loss, of their primary care and specialist physicians, so that many persons with disabilities, including the petitioners Beckwith and Dowling, will be forced into institutions or will be at risk of being forced into institutions in order to survive, and will suffer injury and pain from untreated illness, injury, or condition.

FIRST CAUSE OF ACTION

By each of the petitioners except petitioner Jason Young, for mandamus and injunctive relief to enjoin each of the respondents to refrain from implementing a 10% reduction of payments to Medi-Cal fee-for-service providers under subds. (a), (b)(1), (b)(2), and (c) – (e) of § 14105.19 Welf. & Inst. Code, and § 14166.245 Welf. & Inst. Code), – which state statutes and the state action of respondents to implement the state statutes violate, and are hence preempted under the Supremacy Clause by, the quality and equal access clauses of 42 U.S.C. § 1396a(a)(30(A).

* * *

40. Petitioners refer to and incorporate each of the allegations in each of the preceding Paragraphs of this Petition, as if fully set forth herein.

41. The Medicaid Act, in 42 U.S.C. § 1396a, subd. (a)(30)(A), provides:

> "(a) A State plan for medical assistance **must** – (30)(A) **provide for** such methods and procedures relating to the utilization of, and **the payment for, care and services available under the plan** (including but not limited to utilization review plans as provided for in section 1396b(i)(4) of this title) **as may be necessary** to safeguard against unnecessary utilization of such care and services and **to assure that payments are consistent with** efficiency, economy, and **quality of care** and are **sufficient to enlist enough providers** so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; . . . " (Emphasis supplied.)

[42 and 43 omitted in original.]

44. 42 U.S.C. § 1396a, subd. (a)(30)(A), shall hereinafter be referred to as "Sec. 30(A)."

45. However, in view of the fact that on January 10, 2008, the Governor proclaimed a fiscal emergency and called the Legislature into Special Session; and that on February 16, 2008 the Legislature enacted and the Governor signed into law Assembly Bill X3 5, which proclaims in Sec. 15 that "the state faces a fiscal crisis that requires unprecedented measures to be taken to reduce General Fund expenditures," and which proclaims in Sections 16 and 17 that:

> "SEC. 16. This act *addresses the fiscal emergency declared by the Governor* by proclamation on January 10, 2008, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.
>
> SEC. 17 . . . In order to make statutory changes *needed to implement cost containment measures affecting health services, at the earliest possible time,* it is necessary that this act take effect immediately." (Emphasis supplied.)

it is manifest that the sole function and purpose, and the conclusive consideration in the Legislature's decision to enact subds. (a), (b)(1), (b)(2), and (c)-(e) of § 14105.19 Welf. & Inst. Code; and § 14166.245 Welf. & Inst. Code, – which provides that the respondents shall (1) cut Medi-Cal payments to providers in the Medi-Cal fee-for-service program, was budgetary considerations, to "address the fiscal emergency" declared by the Governor, and to effect "cost containment measures affecting health services," by making statutory changes needed to reduce expenditures, (to fit the State's reduced budget), commencing July 1, 2008.

46. However, therein, by each and all of the above allegations, the enactment of subds. (a), (b)(1), (b)(2), and (c)-(e) of § 14105.19 Welf. & Inst. Code; and § 14166.245 Welf. & Inst. Code, by the Legislature (1) was without any consideration of quality and access

as required by Sec. 30(A),[2] and as without any consideration of what it costs providers to perform the various services and procedures, as required by Sec. 30(A);[3] such that the State's sole purpose, and the conclusive factor, in enacting the across-the-board 10% reduction in reimbursement to providers in the Medi-Cal fee-for-service program, was to **reduce the budget deficit**. Accordingly, under the standard of *Orthopaedic Hosp.*, 103 F.3d 1491, at 1500 (1997); and *Arkansas Medical Society, Inc. v. Reynolds*, 6 F.3d 519 (8th Cir.1983), the action of the Legislature to enact the aforesaid subds. (a), (b)(1), (b)(2), and (c)-(e) of § 14105.19 Welf. & Inst. Code; and § 14166.245 Welf. & Inst. Code, and the policy and action of the respondents to implement these statutes by reducing payments to providers in the Medi-Cal fee-for-service program, was and is arbitrary and capricious, and contrary to and in violation of the quality and access provisions of Sec. 30(A); so that hence, under the Supremacy Clause, the aforesaid subds. (a), (b)(1), (b)(2), and (c)-(e) of §14105.19 Welf. & Inst. Code; and § 14166.245 Welf. & Inst. Code are preempted by Sec. 30(A)..

47. Accordingly, by each, and all of the foregoing facts alleged, subds. (a), (b)(1), (b)(2), and (c)-(e) of § 14105.19 Welf. & Inst. Code; and § 14166.245 Welf.

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[2] *Othopaedic* [sic] *Hospital v. Belshe*, 103 F.3d 1491, 1500 (9th Cir.1997).

[3] *Id.*, 103 F.3d at 1500; *Arkansas Medical Society, Inc. v. Reynolds*, 6 F.3d 519 (8th Cir. 1993).

& Inst. Code., were and are unlawful, in violation of the quality and access provisions of Sec. 30(A), so as to be *preempted, under the Supremacy Clause, by the quality and access provisions* of Sec. 30(A), such that the respondent Director and the respondent Department act in excess of and without jurisdiction to implement subds. (a), (b)(1), (b)(2), and (c)-(e) of § 14105.19 Welf. & Inst. Code; and § 14166.245 Welf. & Inst. Code, in implementing the provisions therein of reducing reimbursement to physicians, dentists, pharmacies, and other providers, in the Medi-Cal fee-for-service program, commencing July 1, 2008.

48. Further, unless restrained by the Court by an appropriate writ of mandamus under § 1085 Code Civ. Proc. or by an appropriate injunction, the respondents Director and Department will implement the aforesaid subds. (a), (b)(1), (b)(2), and (c)-(e) of § 14105.19 Welf. & Inst. Code; and § 14166.245 Welf. & Inst. Code, and thereby will cause injury to each of the petitioners (except petitioner Jason Young, who is in a Medi-Cal managed care plan); which injury is irreparable, all, as has been hereinbefore set forth in detail in the within amended Petition, but, the petitioners have no administrative remedy, and the petitioners have no plain, speedy, or adequate remedy whatsoever or at all, except by this Verified First Amended Petition for Writ of Mandamus.

WHEREFORE, the Petitioners respectively pray for judgment as shall hereinafter be specified:

SECOND CAUSE OF ACTION

By petitioners Jason Young and the Tran Pharmacy, Inc., dba Tran Pharmacy, for mandamus and injunctive relief to enjoin each of the respondents to refrain from implementing the actuarial equivalent' of a 10% reduction of payments to Medi-Cal managed care plans under subd. (b)(3) of § 14105.19 Welf. & Inst. Code, which state statute and the action of respondents to implement the state statutes violate, and are hence preempted under the Supremacy Clause by, the quality and equal access clauses of 42 U.S.C. § 1396a(a)(30(A).

* * *

49. Petitioners refer to and incorporate each of the allegations in each of the preceding Paragraphs of this Petition, as if fully set forth herein; and, especially, refer to and incorporate each of the allegations in the First Cause of Action as if fully set forth herein.

50. The provisions of 42 U.S.C. § 1396a(a)(30)(A), – herein, "Sec. 30(A)" – apply to all managed care plans and managed care entities, who arrange to furnish or otherwise furnish Medi-Cal services to their members or beneficiaries, just as directly, fully, and equally as Sec. 30(A) applies to providers in the Medi-Cal fee-for-service program.

51. The provisions of Social Security Act § 1915(b)(4), (42 U.S.C. § 1396n(b)(4)), also specifically, by its terms, requires that the State of California set rates and payments for Medi-Cal managed care plans

and Medi-Cal managed care entities, upon the same standards as are set forth in Sec. 30(A).

52. Accordingly, – by each and all of the allegations in the preceding Paragraphs of this Petition, – and because Medi-Cal managed care plans and entities are agents of the State who, in effect, set the rates which shall be payable to providers for services to Medi-Cal recipients in Medi-Cal managed care plans, – the actions of the Legislature in enacting subd. (b)(3) of § 14105.19 Welf. & Inst. Code, to reduce payments to Medi-Cal managed care plans and entities by 10%, or the actuarial equivalent thereof, was arbitrary and capricious, and contrary to Sec. 30(A), and contrary to Social Security Act § 1915(b)(4), (42 U.S.C. § 1396n(b)(4); such that the policy of the respondents to implement, and the action of the respondents to implement subd. (b)(3) of § 14105.19 Welf. & Inst. Code, including the reduction of payments to Medi-Cal managed care plans and entities by 10%, or the actuarial equivalent thereof, managed care plans and entities, is thereby, under the Supremacy Clause, preempted by Sec. 30(A) and by Social Security Act § 1915(b)(4), (42 U.S.C. § 1396n(b)(4)), such that, unless the Court issues an appropriate writ of mandamus or injunction, the petitioner Jason Young and the petitioner Tran Pharmacy, Inc., dba Tran Pharmacy, (who are a managed care recipient and managed care provider), – will be irreparably injured, and put at risk of injury, in the same wise as has been prior alleged in the First Cause of Action, by the respondents reducing

payments, commencing July 1, 2008, to Medi-Cal managed care plans, in the actuarial equivalent of a 10% reduction in payment, which reduction will be passed through to providers who serve Medi-Cal managed care plan patients, causing fewer providers to participate in Medi-Cal managed care plans and injuring Medi-Cal managed care patients such as petitioner Josh Young, and forcing them or tending to force into institutions in order to survive..

WHEREFORE, the petitioners pray for judgment as shall hereinafter be specified:

THIRD CAUSE OF ACTION

(By all petitioners against each respondent.)

Preemption by the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, ("ADA"), under the Supremacy Clause, of Sections 14, and 15 of Assembly Bill X3 5, for violation of the ADA, 42 U.S.C. § 12132, by forcing or threatening to force disabled persons into institutions, – such that such administration of the Medi-Cal program prevents, and does not provide, disabled persons with the most integrated setting appropriate to their needs, as mandated by the ADA and by *Olmstead v. L.C., 527 U.S. 581 (1999).*

53. Petitioners here refer to and incorporate each of the allegations in the preceding Paragraphs as if fully set forth herein.

54. By each and all of the foregoing facts alleged in Paragraphs 1 through 53 of this Petition, Sections 14, and 15 of Assembly Bill X3 5 are, singly and cumulatively, unlawful, in violation of the Americans with Disabilities Act of 1990, ("ADA"), 42 U.S.C. § 12132, which provides:

> "Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity(,"

in that the aforesaid 10% cut in Medi-Cal provider and hospital reimbursement of Sections 14 and 15 of Assembly Bill X3 5, will, singly, cumulatively, and proximately result in forcing, and threatening to force, thousands of persons who are qualified individuals with a disability, as defined in the ADA, into institutions, and place them at risk of being forced into institutions, in order to survive; and many will in any event be injured in their person and in their spirit and will die or be put at risk of dying; including but not limited to:

- the petitioners Margaret Dowling, Mark Beckwith, and Jason Young;
- hundreds of SSI recipients who are clients of the petitioner ILCSCal;
- many patients of the patients of the pharmacy petitioners,
- some members of the SF Gray Panthers and Sacto Gray Panthers,

so that therein, many qualified individuals with a disability, (as defined in the ADA), including but not limited to disabled SSI recipients who depend on Medi-Cal services to be able to live in the community, will be denied and will become unable to live in the **most integrated setting** appropriate to (1) the needs of those hundreds of thousands of Medi-Cal recipients who are SSI disabled persons, including (2) the needs of the disabled petitioners Margaret Dowling, Mark Beckwith, and Jason Young, and including (3) the needs of thousands of SSI disabled persons who are clients of the petitioner ILCSCal; and including (4) disabled patients of the pharmacy petitioners; **so that such administration of the Medi-Cal program does not provide qualified individuals with a disability the most integrated setting appropriate to their needs**, as mandated by the ADA, by *Olmstead v. L.C., supra,* 527 U.S. 581 (1999), and 28 Code of Federal Regulations, § 35.130(d). [1988].

55. Further, once the State has placed qualified individuals with a disability, (as defined by the ADA), in the community, including the petitioners Dowling, Beckwith, and Young, and the disabled persons listed in the preceding Paragraph; all, with medical, attendant, and other services and life-needed supplied furnished and paid by Medi-Cal fee-for-service and managed care program, or, assisted by these Medi-Cal programs of the State, so as to enable them to be so integrated into the community, the State has the burden, under the ADA, to justify and to show

reasonable grounds why such level, kinds, and quality of supporting services, assistance, and framework for independent living may be withdrawn by the State, as, in case at bar, by (1) provider payments for one month being arbitrarily and capriciously held for one month, and (2) provider and hospital payments being reduced 10%, permanently, by the State to Medi-Cal providers and Medi-Cal managed care plans, (which reductions to the managed care plans, will foreseeably and inevitably be passed through to the providers who provide the services of the Medi-Cal managed care plan to Medi-Cal recipients).

56. Therein and thereby, as set forth in the preceding Paragraphs of this Third Cause of Action, Secs. 14, and 15 of Assembly Bill X3 5 violate the ADA, and are preempted, under the Supremacy Clause, by the ADA specifically, by 42 U.S.C. § 12132, by forcing or threatening to force, individuals with a disability (as defined by the ADA), into institutions, and by putting them at risk to be forced into institutions, (including the petitioners Dowling, Beckwith, and Young, and the patients, clients, and members of the petitioner pharmacies, the ILCSCal, the Sacto Gray Panthers, and the SF Gray Panthers, – which is not the most integrated setting appropriate to their needs, as mandated by ADA and by *Olmstead v. L.C.*, *supra*, 527 U.S. 581.

Therein and thereby, the respondent Director and Department, by violating the ADA and of *Olmstead* on a statewide basis, are and will act in excess of

without jurisdiction to implement the aforesaid statutes (i.e., Secs. 14, and 15 of Assembly Bill X3 5).

57. Further, unless restrained by the Court by an appropriate writ of mandamus under § 1085 Code Civ. Proc. or by an appropriate injunction, the respondents Director and Department will implement the aforesaid Secs. 14, and 15 of Assembly Bill X3 5, and therein will cause each of the petitioners concrete injury, which is irreparable, as set forth in detail in the preceding Paragraphs of this Verified First Amended Petition for Writ of Mandamus; but, the petitioners have no administrative remedy, and no plain, speedy, or adequate remedy whatsoever or at all, except by this Verified First Amended Petition for Writ of Mandamus.

WHEREFORE, the Petitioners respectively pray for judgment as shall hereinafter be specified:

FOURTH CAUSE OF ACTION

Separate statement of violation of ADA

(By each petitioner against each respondent.)

58. Petitioners here refer to and incorporate each of the allegations in the preceding Paragraphs as if fully set forth herein.

59. Each and all of the acts of each of the respondents in violation of the ADA, which are set forth in the preceding Third Cause of Action, tend to force, do force, and threaten, to force qualified individuals

with a disability in the Medi-Cal program, – (including the petitioners Margaret Dowling, Mark Beckwith, and Jason Young, and the disabled patients, clients, and members of the remaining petitioners), – into institutions; all, in violation of the ADA (42 U.S.C. §12132) and *Olmstead, supra*. Accordingly, under the ADA, including 42 U.S.C. §§ 12123, and 12133, – which incorporates, via 29 U.S.C. § 794a(a)(2), the remedies of Title VI of the Civil Rights Act of 1964, (namely, 42 U.S.C. § 2000d-1 et seq.), – the petitioners herein have a federal right to an appropriate injunction herein to restrain the respondents from implementing Secs. 14, and 15 of Assembly Bill X3 5, plus, statutory reasonable attorneys's [sic] fees as provided by 42 U.S.C. § 12133.

WHEREFORE, the petitioners and each of them pray for judgment as follows;

1. That petitioners have judgment against each of the respondents, and that respondents take nothing.

First Cause of Action

2. That an alternative writ of mandamus, and then a peremptory writ of mandamus, and/or an injunction, be issued to command the respondents DEPARTMENT OF HEALTH CARE SERVICES ("Department") and SANDRA SHEWRY, Director of the Department, to set aside their preempted policy to implement subds. (a), (b)(1), (b)(2), and (c)-(e) of § 14105.19 Welf. & Inst. Code; and § 14166.245 Welf. & Inst. Code, and to refrain from implementing the

aforesaid subds. (a), (b)(1), (b)(2), and (c)-(e) of § 14105.19 Welf. & Inst. Code; and § 14166.245 Welf. & Inst. Code, including refraining from reducing payments by 10%, or at all, to providers in the Medi-Cal fee-for service program;

3. That petitioners have reasonable attorneys' fees under § 1021.5 Code Civ. Proc.

Second Cause of Action

4. That an alternative writ of mandamus, and then a peremptory writ of mandamus, and/or an injunction, be issued to command the respondents DEPARTMENT OF HEALTH CARE SERVICES ("Department") and SANDRA SHEWRY, Director of the Department, to set aside their preempted policy to implement subd. (b)(3) of § 14105.19 Welf. & Inst. Code, and to refrain from implementing the aforesaid preempted subd. (b)(3) of § 14105.19 Welf. & Inst. Code, including refraining from reducing payments to Medi-Cal managed care plans by 10%, or by the actuarial equivalent thereof, and in any other amount of payment reduction.

5. That petitioners have reasonable attorneys' fees under § 1021.5 Code Civ. Proc.

Third Cause of Action

6. That a writ of mandamus or injunction be issued to order the respondents DEPARTMENT OF HEALTH CARE SERVICES ("Department") and

SANDRA SHEWRY, Director of the Department, to set aside their preempted policy of implementing Sections 14, and 15 of Assembly Bill X3 5, and refrain from implementing the aforesaid preempted Sections 14, ands [sic] 15 of Assembly Bill X3 5, in whole or in part; including, refraining from educing [sic] payments by 10% or any other amount of reduction, to Medi-Cal providers in the Medi-Cal fee-for-service program, and Medi-Cal managed care plans, for dates of service on and after July 1, 2008, or at any other time.

7. That petitioners have reasonable attorneys' fees under § 1021.5 Code of Civil Procedure.

Fourth Cause of Action

8. That an injunction be issued under the Americans with Disabilities Act of 1990, ("ADA"), to command the respondents DEPARTMENT OF HEALTH CARE SERVICES ("Department") and SANDRA SHEWRY, Director of the Department, to refrain from implementing Secs. 14, and 15 of Assembly Bill X3 5, in whole and in every part, including, refraining from implementing a 10% reduction, or any other reduction in payments, to Medi-Cal fee-for-services providers and Medi-Cal managed care plans.

9. That petitioners have reasonable attorneys' fees under 42 U.S.C. § 12133.

All Causes of Action

10. That petitioners have costs of suit incurred, together with such other and further relief as may be just.

Dated: May 12, 2008.

LYNN S. CARMAN
STANLEY L. FRIEDMAN

By: /s/ Lynn S Carman
Attorneys for Petitioners Independent Living Center of Southern California, Inc.; Gray Panthers of Sacramento; The Gray Panthers of San Francisco; Gerald Shapiro, Pharm.D., dba Uptown Pharmacy & Gift Shoppe; Sharon Steen, dba Central Pharmacy; Tran Pharmacy, Inc., dba Tran Pharmacy; Margaret Dowling; Mark Beckwith; and Jason Young

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VERIFICATION

LYNN S. CARMAN deposes and says:

I am the attorney for the Petitioners in the within Verified First Amended Petition for Writ of Mandamus. I make this verification for the reason that the Petitioners are absent from the county where I have my office. I have read the pleading and I am informed and believe the matters therein to be true

and on that ground allege that the matters stated therein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Novato, California, on May 12, 2008.

/s/ Lynn S Carman
LYNN S. CARMAN

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF CALIFORNIA
WESTERN DIVISION

INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, et al., Petitioners, vs. SANDRA SHEWRY, Director of Department of Health Services of the State of California, et al. Respondents.	Case No. CV 08-3315 CAS (MANx) ORDER DENYING PETITIONERS' MOTION FOR A PRELIMINARY INJUNCTION (Filed Jun. 25, 2008)

I. INTRODUCTION

On April 22, 2008, petitioners filed a verified petition for writ of mandamus in the Los Angeles County Superior Court, seeking mandamus and injunctive relief against the California Department of Health Care Services ("the Department"), Sandra Shewry, Director of the Department ("the Director"), and Does 1 through 50.[1] The Department is a California agency

[1] Petitioners are the Independent Living Center of Southern California, Inc.; Gray Panthers of Sacramento; the Gray Panthers of San Francisco; Gerald Shapiro, Pham.D., [sic] d/b/a Uptown Pharmacy and Gift Shoppe; Sharon Steen, d/b/a Central Pharmacy; Mark Beckwith; Margaret Dowling; Tran Pharmacy, Inc., d/b/a Tran Pharmacy; and Jason Young.

charged with the administration of California's Medicaid program, Medi-Cal. Petitioners are health care advocates and Medi-Cal providers and recipients.

On February 16, 2008, the California Legislature enacted Assembly Bill X3 5 ("AB 5") in special session. First Amended Petition ¶ 20. Section 14 of AB 5 adds Cal. Welf. & Inst. Code § 14105.19, which reduces by ten percent payments under the MediCal fee-for-service program for physicians, dentists, pharmacies, adult day health care centers, clinics, health systems, and other providers for services provided on or after July 1, 2008. Cal. Welf. & Inst. § 14105.19(b)(1); First Amended Petition ¶ 22. California Welfare & Institutions Code § 14105.19 also reduces payments to managed care plans by the actuarial equivalent of the ten percent payment reduction. Cal. Welf. & Inst. § 14105.19(b)(3); First Amended Petition ¶ 22. Section 15 of AB 5 adds Cal. Welf. & Inst. Code § 14166.245, which reduces payments to acute care hospitals not under contract with the Department for inpatient services provided on or after July 1, 2008. Cal. Welf. & Inst. § 14166.245(c); First Amended Petition ¶ 23.[2] These rate and

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[2] The Department is authorized to contract with individual hospitals for the exclusive right to treat Medi-Cal patients. Cal. Welf. & Inst. § 14081; *Cedars-Sinai Med. Ctr. v. Shewry*, 137 Cal. App. 4th 964, 969-70 (2006). Contracting hospitals are reimbursed by the Department at the negotiated contract rate, and, once the Department has contracted with enough hospitals to meet the needs of Medi-Cal beneficiaries in a geographic area, it awards no further contracts in that area. *Cedars-Sinai*, 137

(Continued on following page)

payment reductions are referred to herein as the "ten percent rate reduction."

Petitioners allege that the ten percent rate reduction violates Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.* ("the Medicaid Act"), and therefore, may not be implemented. Petitioners seek declaratory relief and injunctive relief to restrain the implementation of the ten percent rate reduction.

On May 19, 2008, respondents removed this action to this Court, based on federal question jurisdiction. On May 28, 2008, petitioners filed the operative first amended petition against the Department and the Director. On June 1, 2008, petitioners voluntarily dismissed the Department as a respondent in this case without prejudice.

On May 30, 2008, petitioners filed the instant motion for preliminary injunction. Respondents filed their opposition thereto on June 12, 2008.[3] On June 16, 2008, petitioners filed a reply. A hearing was held on June 23, 2008, and the Court took this matter under submission. After carefully considering the parties' arguments, the Court denies petitioners' motion for the reasons set forth below.

Cal. App. 4th at 970. Noncontract hospitals are only reimbursed for treating Medi-Cal patients under certain circumstances, including where emergency care or services are provided. *Id.*

[3] By order dated June 19, 2008, the Court granted respondents' ex parte application to allow for the late filing of their instant opposition.

II. BACKGROUND

The Medicaid Act authorizes the federal government to distribute funds to participating states for the purpose of providing medical assistance to low income persons who are aged, blind, disabled, or members of families with dependent children. Medicaid is a cooperative federal program: the federal government provides federal funding to the states so that states may provide medical care to their needy citizens. State participation is voluntary; however, once a state chooses to participate by accepting federal funds, it must comply with requirements imposed by the Medicaid Act.

Because California has elected to participate in the Medicaid program, it must administer its state Medicaid program, known as Medi-Cal, in compliance with a state plan that has been pre-approved by the Secretary of the U.S. Department of Health and Human Services ("the Secretary"), and which complies with the requirements set forth in 42 U.S.C. § 1396a(a)(1)-(70). In accordance with these requirements, California must also provide methods and procedures for the payment of care and services that are consistent with efficiency, economy, and quality of care, and that ensure their availability to the Medicaid population to the same extent as they are available to the general population in the geographic area. 42 U.S.C. § 1396a(30)(A) ("§ (30)(A)").

Further, under California law, the Department must administer Medi-Cal in accordance with the

state plan; applicable state law, as specified in the Welfare and Institutions Code; and Medi-Cal regulations. Cal. Code Regs. tit. 22, § 50004(b).

Petitioners now move to preliminary enjoin the implementation of the ten percent rate reduction. The request for a preliminary injunction is predicated only on petitioners' first and second claims for relief.[4] In their first and second claims, petitioners allege the ten percent rate reduction violates 42 U.S.C. § 1396a(30)(A), which requires that a state plan must:

> provide such methods and procedures relating to the utilization of, and payment for, care and services available under the plan . . . as may be necessary . . . to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and

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[4] The first amended petition asserts four claims for relief. Petitioners' first claim is asserted by each of the petitioners except petitioner Jason Young. Petitioners' second claim is brought by petitioners Young and the Tran Pharmacy, Inc., d/b/a Tran Pharmacy. Petitioners third and fourth claims allege that §§ 14 and 15 of AB 5 are unenforceable because they are preempted by and violate the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §§ 12181 *et seq*. However, because petitioners' motion for preliminary injunction is predicated only on the first and second claims, and only on their Supremacy Clause theory raised in their motion papers, those are the only claims and argument that the Court addresses herein.

> services are available to the general population in the geographic area.

Petitioners allege that the Department and the Legislature improperly failed to consider efficiency, economy, and quality of care as required by § 30(A) in enacting the ten percent reduction, and that as a result of AB 5, there will not be a sufficient number of providers to provide equal access to healthcare as mandated by § 30(A).

III. LEGAL STANDARD

A preliminary injunction is appropriate when the moving party shows either (1) a combination of probable success on the merits and the possibility of irreparable harm, or (2) the existence of serious questions going to the merits and that the balance of hardships tips sharply in the moving party's favor. *See Rodeo Collection, Ltd. v. West Seventh,* 812 F.2d 1215, 1217 (9th Cir. 1987). These are not two distinct tests, but rather "the opposite ends of a single 'continuum in which the required showing of harm varies inversely with the required showing of meritoriousness.'" *Id.* A "serious question" is one on which the movant "has a fair chance of success on the merits." *Sierra On-Line, Inc. v. Phoenix Software, Inc.,* 739 F.2d 1415, 1421 (9th Cir. 1984).

IV. DISCUSSION

The "quality of care" provision of § (30)(A) provides that

> [a] State plan for medical assistance must . . . provide such methods and procedures relating to the utilization of and the payment for, care and services available under the plan . . . as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care.

42 U.S.C. § 1396a(30)(A). The "equal access" provision of § 30(A) provides that

> [a] State plan for medical assistance must . . . provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan . . . as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are . . . sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.

Id.

In *Sanchez v. Johnson,* 416 F.3d 1051 (9th Cir. 2005), the Ninth Circuit held that § 30(A) does not confer individual rights that are enforceable under 42 U.S.C. § 1983. *Id.* at 1060. There, plaintiffs,

consisting of a class of developmentally disabled individuals and several organizations, brought suit against California officials charged with the administration of programs for persons with developmental disabilities. *Id.* at 1053-54. The plaintiffs asserted claims under 42 U.S.C. § 1983, alleging that the defendants violated § 30(A) by failing to fund adequately community-based programs for persons with developmental disabilities. *Id.* at 1055. The district court found that in light of the Supreme Court's decision in *Gonzaga University v. Doe,* 536 U.S. 273 (2002), the Medicaid Act did not confer individual rights that were enforceable by recipients of Medicaid funding or providers of Medicaid services, under 42 U.S.C. § 1983.[5] *Id.* The district court therefore granted judgment on the pleadings in favor of the defendants. *Id.*

On appeal, the Ninth Circuit affirmed. The court reasoned that § 30(A) did not "focus[ ] on the rights of a specific class of beneficiaries." *id.* at 1059. The court found that instead, "§ 30(A) is concerned with overall methodology rather than conferring individually enforceable rights on individual Medicaid recipients." *Id.* at 1059-60. Because a plaintiff seeking to prosecute a claim under 42 U.S.C. § 1983 must "assert the violation of an individually enforceable *right* conferred specifically upon him, not merely a violation of

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[5] In *Gonzaga,* the Supreme Court clarified the standard for determining whether a federal statute creates rights enforceable under 42 U.S.C. § 1983.

federal law," and because § 30(A) does not manifest a congressional intent to confer individual rights, the court found that the Medicaid Act did not give rise to rights enforceable under 42 U.S.C. § 1983. *Id.* at 1062 (emphasis in original).[6]

It is true, as petitioners argue, that in *Sanchez* the Ninth Circuit was presented with the question of whether individuals may invoke 42 U.S.C. § 1983 to sue for an alleged violation of § 30(A). However, in order to decide that issue the Ninth Circuit was first required to determine whether § 30(A) gives rise to any federally created individual rights: in evaluating "whether a statutory violation may be enforced through § 1983 . . . [a court] must first determine whether Congress *intended to create a federal right*. *Gonzaga,* 536 U.S. at 283 (emphasis in original). Thus, in deciding that the *Sanchez* plaintiffs could not enforce § 30(A) under 42 U.S.C. § 1983, the Ninth Circuit necessarily concluded that § 30(A) does not create any individual federal rights.

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[6] The Court notes that there is a circuit split concerning whether plaintiffs can sue for alleged violations by state officials of § 30(A) under 42 U.S.C. § 1983. Specifically, the Fifth, Sixth, Ninth, and Tenth Circuit Courts of Appeal [sic] have found that Medicaid beneficiaries cannot sue for alleged violations of § 30(A) under 42 U.S.C. § 1983. On the other hand, the Eighth Circuit has concluded that § 30(A) creates individual rights that can be the subject of suit under 42 U.S.C. § 1983. There is currently pending a petition for certiorari to the Supreme Court from the judgment in the Fifth Circuit case, *Equal Access for El Paso, Inc. v. Hawkins,* 509 F.3d 697 (5th Cir. 2007), *cert. pending* (U.S. Supreme Ct. No. 07-1160) (filed March 10, 2008).

Because after *Sanchez,* petitioners do not have any claims for relief under 42 U.S.C. § 1983 by which to seek redress for violations of § 30(A), petitioners seek to avail themselves of a claim for relief allegedly arising directly under the Supremacy Clause, Article VI, § 2, of the United States Constitution. However, the Supremacy Clause, of its own force, does not create any rights enforceable under 42 U.S.C. § 1983. *See Golden State Transit Corp. v. L.A.*, 493 U.S. 103, 108 (1989) ("'[The Supremacy] clause is not a source of any federal rights'; it [']secures federal rights by according them priority whenever they come in conflict with state law.'") (quoting *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 613 (1979)).

In an attempt to avoid the effect of *Sanchez,* petitioners rely on cases following *Shaw v. Delta Air Lines,* 463 U.S. 85 (1983), to argue that AB 5 is preempted by the Medicaid Act, and therefore invalid under the Supremacy Clause, such that they are entitled to relief based on an implied right of action under the Supremacy Clause. In opposition, respondents argue that the Supremacy Clause does not confer any rights on petitioners. Respondents assert that petitioners therefore lack standing to maintain this suit.

In *Shaw,* the United States Supreme Court stated that

> [i]t is beyond dispute that federal courts have jurisdiction over suits to enjoin state officials from interfering with federal rights.

> A plaintiff who seeks injunctive relief from state regulation, on the ground that such regulation is pre-empted by a federal statute which, by virtue of the Supremacy Clause of the Constitution, must prevail, thus presents a federal question which the federal courts have jurisdiction under 28 U.S.C. § 1331 to resolve.

Shaw, 463 U.S. at 96 n.14; *see e.g., Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 641-43 (2002) (stating that the district court has federal question jurisdiction under 28. U.S.C. § 1331 in a suit where the plaintiff claimed that the Federal Communications Commission's order was preempted by federal law); *Lawrence County v. Lead-Deadwood School Dist.*, 469 U.S. 256, 259 n.6 (1985) (stating that the Eighth Circuit erroneously concluded that a district court lacked subject matter jurisdiction where the affected plaintiff school district alleged that a South Dakota statute conflicted with federal law and was therefore invalid under the Supremacy Clause); *see also Hydrostorage, Inc. v. Northern Cal. Boilermakers Local Joint Apprenticeship Comm.*, 891 F.2d 719 (9th Cir. 1989).

Shaw preemption claims have been permitted in three circumstances. First, where the plaintiff claims that a state law requires him to act in violation of federal law.[7] Second, such claims have been allowed

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[7] *See e.g., Lawrence County v. Lead-Deadwood School Dist. No. 40-1*, 469 U.S. 256, 258, 260-61 (1985) (after Lawrence

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where the plaintiff contends that his conduct will be restricted by a state law that is preempted by federal law.[8] Third, courts have entertained *Shaw*

County refused to distribute federal funds to the school district in accordance with a state statute, arguing that federal law gave it the discretion to spend the federal funds for any governmental purpose it chose, the school district filed suit seeking to compel Lawrence County to distribute the federal funds); *Burgio & Campofelice, Inc. v. N.Y. State Dep't of Labor*, 107 F.3d 1000, 1005-07 (2d Cir. 1997) (suit by a public works contractor to enjoin the New York Department of Labor from enforcing a state wage law, alleging the state law was preempted by ERISA); *Verizon Md., Inc. v. Public Serv. Comm'n of Md.*, 535 U.S. 635, 641-42 (2002) (Verizon sued the Maryland Public Service Commission alleging that the Federal Communications Commission's order requiring Verizon to make payments under a negotiated interconnection agreement violated the Telecommunications Act of 1996); *Qwest Corp. v. City of Santa Fe*, 380 F.3d 1258, 1264 (10th Cir. 2004) (suit by telecommunications provider challenging local ordinance that imposed several requirements on telecommunications providers before they could access city-owned rights-of-way).

[8] *See e.g., City of L.A. v. County of Kern*, 509 F. Supp. 2d 865, 889 (C.D. Cal. 2007) (where the plaintiffs challenged a local ordinance on that grounds that it was preempted by state law, the court analogized the law of preemption under the California Constitution to that under the Supremacy Clause, and held that the plaintiffs had standing to bring suit because their "conduct would be restricted by a local ordinance they challenge[d] as preempted, even if the plaintiffs d[id] not assert rights protected by the preempting statute itself"); *Planned Parenthood of Cent. Tex. v. Sanchez*, 280 F. Supp. 2d 590, 596, 599-602 (W.D. Tex. 2003) (family planning and abortion services provider challenged state statute that precluded payment of Medicaid funds to organizations providing abortions services); *St. Thomas – St. John Hotel & Tourism Ass'n, Inc. v. Gov't of U.S. Virgin Islands*, 218 F.3d 232, 240-42 (3d Cir. 2000) (challenge to territorial law

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preemption claims where state law interferes with federally created rights.[9]

Here, AB 5 neither compels nor restricts petitioners' own conduct. In order to state a claim, petitioners must therefore show that AB 5 interferes with some individual federal right that arises under § 30(A). However, for the reasons stated *supra*, § (30)(A) does not give rise to a federally created right.[10]

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providing that an employee discharged for any reason other than for cause as set forth in nine enumerated reasons will be considered to have been wrongfully discharged).

[9] *See e.g., League of Women Voters v. Blackwell,* 340 F. Supp. 2d 823, 827-28 (N.D. Ohio 2004) (challenge to Ohio Secretary of State's directive prescribing procedures for obtaining identification from first-time voters).

[10] Petitioners reliance on *Orthopaedic Hospital v. Belshe,* 103 F.3d 1491 (9th Cir. 1997), decided before *Sanchez,* is misplaced. There, the plaintiff-providers filed suit under 42 U.S.C. § 1983, claiming that the Director violated § 30(A) by setting reimbursement rates for hospital providers of outpatient services without considering hospital costs. *Orthopaedic Hosp.,* 103 F.3d at 1492. In that case, however, there was no discussion of whether plaintiffs had any federally created individual rights. However, because *Sanchez* has decided that no individual right to sue is conferred by § 30(A), it appears that the holding of *Orthopaedic Hospital* is not controlling on that issue.

The cases addressed by petitioners at the hearing held herein are similarly unavailing. In *Ball v. Rodgers,* 492 F.3d 1094 (9th Cir. 2007), the court, noting that after *Sanchez,* § 30(A) cannot be enforced under 42 U.S.C. § 1983, analyzed different provisions of the Medicaid Act, which it determined, unlike § 30(A), gave rise to individual rights. In *Day v. Apoliona,* 496 F.3d 1027 (9th Cir. 2007), the Ninth Circuit applied the

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Because petitioners do not have any federal rights under § 30(A), their probability of success on the claims at issue here is low, if not wholly lacking.[11]

See Golden State Transit Corp. v. L.A., 493 U.S. *supra* at 108 (1989) ("'[The Supremacy] clause is not a source of any federal rights'; it [']secures federal rights by according them priority whenever they come in conflict with state law.'") (quoting *Chapman v. Houston Welfare Rights Org.*, 441 U.S. 600, 613 (1979)).

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factors set forth in *Blessing v. Freestone*, 520 U.S. 329 (1997), and *Gonzaga University v. Doe*, 536 U.S. 273 (2002), to conclude that beneficiaries of a trust had individual rights that could be enforced under 42 U.S.C. § 1983. *Arc of Wash. State Inc. v. Braddock*, 427 F.3d 615 (9th Cir. 2005), involved a challenge under the ADA.

[11] Petitioners' reliance on *Burgio & Campofelice, Inc. v. New York State DOL*, 107 F.3d 1000 (2d Cir. 1997) is also misplaced. In *Burgio & Campofelice, Inc.*, the plaintiff argued that the allegedly preempted state statute improperly caused the withholding of money that it was due under a public works contract. *Burgio & Campofelice, Inc.*, 107 F.3d at 1005-06. In *Pharm. Research & Mfrs. of Am. v. Concannon*, 249 F.3d 66 (1st Cir. 2001), the First Circuit concluded that the plaintiff had standing to assert a claim under the Supremacy Clause reasoning that "[w]here a party has established a concrete injury in fact, and otherwise has standing to challenge the lawfulness of the statute, it is entitled to assert those concomitant rights of third parties that would be diluted or adversely affected should [its] constitutional challenge fail and the statute[] remain in force." *Id.* at 74 (internal quotations omitted; alterations in original). Here, § 30(A) does not give petitioners any right to Medi-Cal funds.

In light of the Court's finding that petitioners have no likelihood of succeeding on the merits, the Court, while acutely cognizant of the potential adverse consequences of the ten percent rate reduction, declines to address petitioners' arguments that they have shown irreparable harm. *See Global Horizons, Inc. v. United States DOL*, 510 F.3d 1054, 1058 (9th Cir. 2007) ("Once a court determines a complete lack of probability of success or serious questions going to the merits, its analysis may end, and no further findings are necessary.").

V. CONCLUSION

In accordance with the foregoing, the Court hereby DENIES petitioners' motion for preliminary injunction.

IT IS SO ORDERED.

Dated: June 25, 2008

/s/ Christina A. Snyder
CHRISTINA A. SNYDER
UNITED STATES
DISTRICT JUDGE

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

MANAGED PHARMACY CARE, a California corporation; INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, INC., a California corporation; GERALD SHAPIRO, Pharm.D., doing business as Uptown Pharmacy & Gift Shoppe; SHARON STEEN, doing business as

No. CV09-0382 SJO PJWX

(Filed Jan. 16, 2009)

Central Pharmacy; and
TRAN PHARMACY, INC.,
a California corporation,

Plaintiffs,

-vs.-

DAVID MAXWELL-JOLLY,
Director of Department of
Health Care Services of the
State of California,

Defendant. /

The Plaintiffs complain of the defendant DAVID MAXWELL-JOLLY, Director of Department of Health Care Services of the State of California, and for claims for relief allege:

INTRODUCTION

1. Plaintiffs challenge the validity of the 5% reduction, under Assembly Bill ("AB") 1183, in reimbursement rates to providers of Pharmacy services to beneficiaries of the Medi-Cal fee-for-service program, for services furnished on or after March 1, 2009, which Defendant David Maxwell-Jolly, Director of the California Department of Health Care Services is responsible for implementing under AB 1183, and Welf. & Inst. Code 14105.

Jurisdiction and venue

2. The Court has jurisdiction under 28 U.S.C. § 1331. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n.4 (1983).

3. The actions of the Defendant complained were and will be done in all parts of the state of California, including the County of Los Angeles. The injuries which are inflicted and threatened which are complained of, to Plaintiffs, the members of Managed Care Pharmacy, and their patients in the Medi-Cal fee-for-service program, have occurred and are threatened to occur in all parts of the state of California, including the County of Los Angeles. The Defendant and the California Attorney General has an office in the County of Los Angeles.

Parties

4. The plaintiff MANAGED PHARMACY CARE ("MPC") is a California corporation, whose principal place of business is at Lake Arrowhead, California, and does business throughout California, including the County of Los Angeles, California. MPC has 284 pharmacy members throughout California, who are pharmacy providers in the Medi-Cal fee-for-service program.

5. (a) The plaintiff INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA, INC. ("ILCSCal") is a nonprofit California corporation which was duly organized and incorporated in California on

July 25, 1977 pursuant to the General Nonprofit Corporation Law of the State of California.

(b) ILCSCal has its principal office and place of business in, and does business in the County of Los Angeles, California.

6. (a) The plaintiff GERALD SHAPIRO, Pharm.D., is a duly licensed registered pharmacist with License No. 24377, who owns and operates a duly licensed retail pharmacy under the fictitious name of Uptown Pharmacy & Gift Shoppe, under retail pharmacy license No. PHY 41615, in the City of Los Angeles, California.

(b) The plaintiff SHAPIRO's pharmacy participates in the Medi-Cal fee-for-service program and also in Medi-Cal managed care plans, under Medi-Cal provider identification No. PHA 416150.

7. (a) The plaintiff SHARON STEEN is an individual who is a copartner in a copartnership which owns and operates a licensed retail pharmacy, under the fictitious name Central Pharmacy, under retail pharmacy license No. PHY 38051, in the City of Santa Monica, California.

(b) The plaintiff STEEN's pharmacy participates in the Medi-Cal fee-for-service program and also in Medi-Cal managed care plans, under Medi-Cal provider identification No. PHA 380510.

8. (a) The Plaintiff TRAN PHARMACY, INC. is California corporation which owns and operates a duly licensed retail pharmacy under the fictitious

name of Tran Pharmacy, under retail pharmacy license No. PHY 43647, in Garden Grove, California.

(b) The TRAN PHARMACY, INC.'s pharmacy participates in the Medi-Cal fee-for-service program and also in Medi-Cal managed care plans, under Medi-Cal provider identification No. PHA 436470.

9. (a) The Department of Health Care Services ("Department") is a department of the State of California. The Department administers the Medi-Cal program under § 14000 et seq. California Welfare and Institutions ("Welf. & Inst.") Code.

(b) The defendant DAVID MAXWELL-JOLLY, ("Director"), is the director of the Department. The Director is exclusively empowered by §§ 14100.1 and 14105 Welf. & Inst. Code to set all policies, rules and regulations in the Medi-Cal program, including all rates payable to Medi-Cal providers. The Director has an office in the County of Los Angeles. The Director is sued in his official capacity, only.

10. Plaintiffs are citizens and residents of the State of California, and sue herein on their own behalf, in their own interest, and in the interest of the members of MPC, and in the interests of the Medi-Cal patients of the Plaintiffs and the members of MPC, as well as also on behalf of the public of the State of California, to procure the performance of public duty by the defendant public official: namely the performance of the mandatory public duty of the Director, under and pursuant to the Supremacy

Clause, not to injure Medi-Cal beneficiaries and their providers, including Pharmacy providers, in the Medi-Cal FFS program, by implementing the federally preempted 5% Rate Reduction of AB 1183, – which aforesaid actions of the Director are preempted, under the Supremacy Clause, in that the aforesaid actions violate and are hence contrary to 42 U.S.C. § 1396a(a)(30)(A), – "Sec. 30A," – including the quality and equal access clauses of Sec. 30A.

11. Plaintiffs also sue in a prudential *jus tertii* capacity to assert their interests as well as the interests of the Medi-Cal patients of the Plaintiffs and the members of MPC, in the claims for relief, and Supremacy Clause preemption, which are sued upon and sought in this within intervention complaint.

12. Plaintiffs, – as well as the Pharmacy provider members of MPC, – and their Medi-Cal patients on behalf of whom Plaintiffs sue herein, – also have standing and a claim for relief against the Director inasmuch as each has suffered, will suffer, and is threatened to suffer, concrete and irreparable injury, unless the Defendant Director is restrained by an appropriate injunction from implementing the 5% Rate Reduction of AB 1183, which actions are preempted under the Supremacy Clause by Sec. 30A.

INTRODUCTION

13. Medi-Cal is a major component of the "safety net" that ensures the State's poor have access to health care services.

FIRST CLAIM FOR RELIEF

For injunctive relief to enjoin the Defendant to refrain from implementing AB 1183 and the 5% Rate Reduction

14. Plaintiffs refer to and incorporate each of the allegations in the preceding Paragraphs of this Complaint as if fully set forth herein.

LEGISLATIVE HISTORY OF ASSEMBLY BILL 1183

15. Assembly Bill ("AB") 1183, – a health trailer bill to implement the budget cutting decisions of the 2008-2009 Budget Bill, was enacted September 30, 2008 and was chaptered as Chapter 758, Statutes 2008-2009.

AB 1183

16. AB 1183 was introduced Feb. 2, 2008 as a hazardous material bill and was amended several times as solely a hazardous material bill. However, on September 15, 2008, the bill was amended in the Senate so as to be at once turned into a trailer bill, on many different subjects, to enact all provisions necessary to implement the provisions of the 2008-2009 Budget Bill; all without any public hearings or any hearing by any committee of the Legislature; was passed shortly before midnight of the same day of September 15, 2008 by the Senate; was sent to the Assembly, and was immediately passed by the

Assembly before 2:08 a.m. of September 16, 2008, – all within the space of a few hours, – and was signed by the Governor and filed with the Secretary of State on September 30, 2008.

17. By such legislative history, there were no committee hearings on AB 1183.

18. Further, there are hundreds of different health care subjects in AB 1183, each of which required separate consideration by the Legislature if any reasoned decision was to be made by any legislator in the Senate or the Assembly in deciding to vote for, or against particular provisions in the hundreds of different subjects contained in the bill. AB 1183 was hence the pure product of pure logrolling, where, if any member wished his or her health care provision in the multi-provisioned AB 1183 to be enacted, that legislator had to accept blindly all the other provisions relating to the hundreds of other subjects in the same bill.

19. It is a fact, and it is manifest from all the facts alleged in this First Claim for Relief, that individual legislators who voted on AB 1183, and the Legislature as a whole, could not and did not appropriately consider, and did not consider at all, whether or not the reduced rates of the 5% Rate Reduction for pharmacy services, and the reduced rates of the 5% Rate Reduction, were consistent with quality of services, or consistent with equal access of beneficiaries to quality services, in the Medi-Cal FFS program.

20. By each and all of the above facts, the action of the Legislature in enacting, and the action of the Director to implement, the 5% Rate Reduction provisions of AB 1183 were and are arbitrary, capricious, and contrary to law, (namely, contrary to the quality and equal clauses of Sec. 30A, and contrary to the requirement of Sec. 30A that a Medicaid rate setter consider the factors of quality and equal access of beneficiaries in the course of setting new Medicaid rates for payment of providers); so that the provisions of (new) Welf. & Inst. Code § 14105.191 which enacted the 5% Rate Reduction in respect to Pharmacy services, effective March 1, 2009, violated and hence are preempted, under the Supremacy Clause, by Sec. 30A.

21. Further, unless restrained by the Court by an appropriate injunction, the defendant Director will implement the aforesaid 5% Rate Reduction in respect to Pharmacy services providers (including members of MPC); which in turn will thereby result in injury to the Plaintiffs; to the members of MPC; and to their Medi-Cal patients – which injury will foreseeably result in Pharmacy providers (including members of MPC) not accepting new Medi-Cal patients, or stopping serving Medi-Cal patients at all, or by reducing kinds, amounts, locations, and levels of services to Medi-Cal beneficiaries, or by going out of business, so that thereby Medi-Cal beneficiaries are and will be caused, and threatened to be caused, denial and reduction of access to life-vital Pharmacy services and treatment in the Medi-Cal FFS program,

resulting in great physical suffering and injury to beneficiaries, including beneficiaries who are patients of Plaintiffs and of the members of MPC; all to the irreparable injury, and threat of irreparable injury, to thousands of Medi-Cal beneficiaries including the beneficiaries served by Plaintiffs and the members of MPC.

22. Plaintiffs and the members of MPC,. and their Medi-Cal patients, have no administrative remedy, nor any plain, speedy, or adequate remedy whatsoever or at all, except by this complaint in intervention for injunctive relief.

WHEREFORE, Plaintiffs pray for judgment and orders as shall hereinafter be specified:

SECOND CLAIM FOR RELIEF

For injunctive relief to enjoin the Defendant to refrain from implementing the 5% Rate Reduction of Sec. 45 of AB 1183.

23. Plaintiffs refer to and incorporate each of the allegations in the preceding Paragraphs of this Petition as if fully set forth herein.

24. However, the enactment of the 5% Rate Reduction in respect to Pharmacy services and providers in the Medi-Cal HS program, of new Welf. & Inst. Code § 14105.191, by Sec. 45 of AB 1183, by the Legislature was without any consideration of quality

and equal access as required by Sec. 30A,[1] and was without any consideration of what it costs providers to perform the various services and procedures, as required by Sec. 30A;[2] such, that the State's sole purpose, and the conclusive factor, in enacting the 5% Rate Reduction was to reduce the budget deficit.

25. Accordingly, under the standard of *Orthopaedic Hosp.*, 103 F.3d 1491, at 1500 (1997), the action of the Legislature to enact the aforesaid provisions of § 14105.191 Welf. & Inst. Code, including the 5% Rate Reduction in respect to Pharmacy providers; and the policy and action of the Director to implement the 5% Rate Reduction, was and is arbitrary and capricious, and contrary to and in violation of the quality and access provisions of Sec. 30A.

26. Accordingly, by each and all of the foregoing facts alleged, new § 14105.191 Welf. & Inst. Code, and the 5% Rate Reduction in respect to Pharmacy providers, were and are contrary to and in violation of the quality and access provisions of Sec. 30A, so as to be preempted, under the Supremacy Clause, by the quality and access provisions of Sec. 30A, such that the Defendant Director is and will he acting in excess of and without jurisdiction to implement § 14105.191

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[1] *Othopaedic* [sic] *Hospital v. Belshe*, 103 F.3d 1491, 1500 (9th Cir.1997).

[2] *Id.*, 103 F.3d at 1500; *Arkansas Medical Society, Inc. v. Reynolds*, 6 F.3d 519 (8th Cir. 1993).

Welf. & Inst. Code, including the 5% Rate Reduction, to Pharmacy providers, commencing March 1, 2009.

27. Further, unless restrained by the Court by an appropriate injunction, the Defendant Director will implement the aforesaid § 14105.191 Welf. & Inst. Code, and the 5% Rate Reduction in payments to Pharmacy providers, commencing March 1, 2009, and thereby will cause injury to Plaintiffs; the members of MPC, and their Medi-Cal patients; which injury is irreparable, all, as has been hereinbefore set forth in detail in the within complaint in intervention.

28. Plaintiffs, the members of MPC, and their Medi-Cal patients, have no administrative remedy, nor any plain, speedy, or adequate remedy whatsoever or at all, except by this complaint in intervention for injunctive and declaratory relief.

WHEREFORE, Plaintiffs prays for judgment and orders as follows:

A. That Plaintiffs have judgment against the Defendant DAVID MAXWELL-JOLLY, Director of California Department of Health Services, (herein, "Director"), and that Defendants take nothing.

B. That a preliminary and permanent injunction be issued to command the Director DAVID MAXWELL-JOLLY to set aside his preempted policy to implement § 14105.19 Welf. & Inst. Code, of AB 1183, and the 5% Rate Reduction, and, to refrain from implementing the same; including but not limited to refraining from reducing payments by 5 percent or by

any other deduction, to pharmacy providers in the Medi-Cal FFS program, for services furnished on and after March 1, 2009.

C. That Plaintiffs have costs of suit incurred, together with such other and further relief as may be just.

LYNN S. CARMAN
STANLEY L. FRIEDMAN

By: /s/ Stanley L. Freidman
Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SANTA ROSA MEMORIAL HOSPITAL, et al., Plaintiffs, v. DAVID MAXWELL-JOLLY, Director the California Department of Health Care Services, Defendant.	Case No. 08-5173 SC ORDER DENYING APPLICATION FOR AN ORDER TO SHOW CAUSE; CLARIFYING PRELIMINARY INJUNCTION (Filed Dec. 10, 2009)

On December 8, 2009, Plaintiffs applied for an Order to Show Cause as to why David Maxwell-Jolly, Director of the California Department of Health Care Services ("DHCS"), should not be held in contempt for violating this Court's injunction of Medi-Cal reimbursement rate reductions. Docket No. 81 ("Application for OSC"). On December 9, 2009, Defendant filed an Opposition. Docket No. 82 ("Opp'n"). Having considered the papers submitted, the Court acknowledges that the text of its preliminary injunction is open to interpretation, and the Court therefore DENIES Plaintiffs' request for an order to show cause why the DHCS should not be held in contempt.

On November 18, 2009, the Court determined – based on binding Ninth Circuit precedent – that the Medi-Cal reimbursement rate reductions at issue violate federal law. Docket No. 68 ("Prelim. Inj.

Order"). Based on language submitted by Plaintiffs, the Court preliminarily enjoined the DHCS from continuing to implement and apply the ten percent reduction in the "allowable cost" reimbursement of the Plaintiffs for the inpatient services they provide to Medi-Cal patients. *Id.* at 14.

In response to the Order, the DHCS updated its website as follows:

> Pursuant to the November 18 order, when DHCS issues audited cost settlements for the plaintiff hospitals in *Santa Rosa,* it shall compensate them at 100 percent of their audited allowable costs for dates of service on or after November 18, 2009. The court's order does not affect interim payments to the plaintiff hospitals under Welfare and Institutions Code section 141666.245(b)(3).

Docket No. 81-1 ("Johnson Decl.") Ex. 1. Plaintiffs contend that the DHCS is violating the injunction by continuing to reduce its interim payments to Plaintiffs. Application for OSC at 2.

The Court now clarifies that its preliminary injunction was always intended to enjoin the ten percent reductions in both interim and final payments. In the Order, the Court quotes from both California Welfare & Institutions Code Section 14166.245(b)(1) regarding interim reimbursements, and Section 14166.245(c)(3) regarding final reimbursements. Order at 2. Throughout the Order, the

Court refers to the Medi-Cal reimbursement rate *reductions*. *See* Order at 2, 4, 6, 8, 9, 11.

For the sake of clarity, the Court MODIFIES the text of its preliminary injunction as follows:

It is hereby ORDERED that, as of November 18, 2009, Defendant Maxwell-Jolly, Director of the California Department of Health Care Services, is preliminarily enjoined from continuing to implement and apply to Plaintiffs the ten percent reduction in interim payments in California Welfare & Institutions Code Section 14166.245(b)(1), and the ten percent reduction in audited allowable costs in California Welfare & Institutions Code Section 14166.245(c)(3).

IT IS SO ORDERED.

Dated: December 10, 2009

/s/ Samuel Conti
UNITED STATES
DISTRICT JUDGE